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[1946] I M.L.J.
January—June.

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PUBLISHED BY
MR. N. RAMARATNAN, M.A., B.L.,
Mylapore, Madras.

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THE

MADRAS LAW JOURNAL.

I] JANUARY [1946

THE LATE MR. R. NARAYANASWAMI AIYAR.

For THE MADRAS LAW JOURNAL, the year 1946 opens in mourning. Mr. Narayanaswami Aiyar, its Editor, Proprietor and Publisher, passed away on December 24, 1945. He became the sole proprietor of the Journal in 1914 and during the thirty odd years of his management, he not only maintained its reputation but also built up its prosperity beyond all anticipations of its early years. And now it passes on as a rich heritage into the hands of his son, Mr. N Ramaratnam, who is the grandson of one of the founders, Mr. V Krishnaswami Aiyar.

The history of THE MADRAS LAW JOURNAL will be found in the pages of the Journal for 1941 in a contribution by Sir P. S. Sivaswami Aiyar on the occasion of its Golden Jubilee Celebration. Two founder members dropped off in the first years and Mr. P. S. Sivaswami Aiyar who joined in 1893 having resigned on becoming Advocate-General in 1907, Mr. V. Krishnaswami Aiyar and Mr. P. R. Sundara Aiyar became sole proprietors of the Law Journal Mr. V Krishnaswami Aiyar became Judge in 1910. His sons were young, and Mr. R. Narayanaswami Aiyar, who had been enrolled as a vakil in 1908 and was working with him, took his place as joint proprietor. Mr. Sundara Aiyar became Judge in 1911 and his brother took his place. In 1914 Mr. Narayanaswami Aiyar bought him off and became sole proprietor. He was too young at the bar in 1914 and soon the Law Journal engrossed the whole of his attention and his connection with the legal world slowly came to centre round the Law Journal. He acquired a printing press in 1921 which not only facilitated the publication of the Journal but also enabled other successful ventures like the publication of the Civil Court Manuals, the Quinquennial

and Decennial Digests and Subject-noted Index of Cases. Recently he took over the publication of the Federal Law Journal. Years of conscientious work have built up for the publications of the Madras Law Journal Press a reputation for quality. The possession of the press has expanded the sphere of usefulness in other directions also. KALAIMAGAL, the Tamil Journal and a neat edition of the Ramayana in Devanagari with an index book of alphabetical list of verses may be specially mentioned.

Of Mr. Narayanaswami Aiyar, as a man, my knowledge begins with Mylapore. I knew his family from my early years. I knew his father as a man of tact and influence and position in Tiruvadamarudur. It is only six miles from my village. My recollections of his family are mixed up with the celebrated Pushyam festival of the place, including a most exciting car festival and ending with a musical entertainment in the local mutt by the most celebrated musician of the time and many a night of late and tired sleep in his street. As I said, my acquaintance with him began in Mylapore after his marriage, in 1908. Sparing in speech but free, easy and pleasant in manner when he spoke, of smiling countenance and youthful appearance and generally of placid temper Mr. Narayanaswami Aiyar was a popular figure in Mylapore. He was liked by all. He always looked younger than his age. On the celebration of his sixty-first birth day the comment was that he and his wife looked ten years younger than they were. He was generous and charitable in disposition. An insidious disease, unnoticed for a time, soon claimed its victim and neither operation nor the most recent remedies could save him. He knew his approaching end and the way he met the end on the day of his death attested to his essentially religious temper.

The Madras Law Journal now passes into the hands of Mr. Ramaratnam. If he inherited, in some measure, his father's power of organisation and management and his mother's and grandfather's courage and determination, it will not be difficult for him to manage the affairs of the Law Journal. After all no journal is run by one man. Mr. Ramaratnam is a Law Graduate, though he has not enrolled himself among the advocates. His father intended him to take his place as proprietor and publisher of the Law Journal. Since the days of its early editors, Mr. Narayanaswami Aiyar has sustained the level of the journal with the assistance of lawyers of eminence. Editorial work largely fell on Mr. (now Sir) S. Varadachariar till he

became a Judge, on Mr. B. Sitarama Row till he became a Government Pleader and on Mr. S. Venkatarama Aiyar till he became the Principal of the Law College of the Andhra University. The members of the Bar have great opportunities to raise themselves and raise legal studies to a high level by making valuable contributions to the pages of a Journal of such established reputation.

I am sure that Mr. Ramaratnam assisted as he will be by his uncles Mr. K. Balasubramania Aiyar and Mr. K. Chandrasekharan, who are both keen students of law, will find no difficulty in running the Madras Law Journal efficiently and successfully

T. R. V SASTRI.

REFERENCE IN MADRAS HIGH COURT.

At the Madras High Court, before the Chief Justice and Mr. Justice Lakshmana Rao, a reference was made on 2nd January, 1946, by Mr. K. Rajah Aiyar, Advocate-General, to the death of Mr. R. NARAYANASWAMI IYER, *Proprietor and Editor* of THE MADRAS LAW JOURNAL.

The Advocate-General said:—

" It is with profound regret that I have to convey to your Lordships the news of the death of Mr. R. Narayanaswami Iyer, an advocate of this Hon'ble Court. If Mr. Narayanaswami Iyer did not achieve name and fame in the active practice of the law, he certainly established a reputation in the field of legal journalism and legal publication. He was enrolled in the year 1908 having served his apprenticeship under the late Mr. V. Krishnaswami Iyer, (his father-in-law). He worked for some time in his chambers until the latter's premature death Later he joined Sir P. S. Sivaswami Iyer and later still he worked in the chambers of Mr. S. Srinivasa Iyengar, where he was a junior when I myself entered that office.

But very soon in 1914 he became the sole proprietor of the Madras Law Journal and thereafter turned his attention and confined his activities and energies solely to that field. How great was his success therein is well-known to all of us. The Madras Law Journal under his able guidance has maintained a reputation second to none in the whole of India Copiously annotated and upto date Civil and Criminal Court Manuals, the Annual, Quinquennial and Decennial Digests, the innumerable text books published by the Madras Law Journal bear ample testimony to his ability For sometime he was a reporter, then the proprietor and latterly the editor of the Madras Law Journal He was a quiet and unassuming man of a retiring disposition, but at the same time he was unostentatiously generous. Quite a number of juniors who had come across him in his sphere of activities have reason to remember the ample and liberal help which he uniformly extended to them He leaves behind him a son who we trust will continue the traditions established by him ".

The Chief Justice in associating himself with the sentiments expressed by the Advocate-General said :

"I and my learned brothers learn with deep regret of the death of Mr. R Narayanaswami Iyer and we wish to associate ourselves with the sentiments expressed by you, Mr. Advocate-General. He was not a prominent practitioner of this Court but he has played his part for many years in the administration of Justice. The Madras Law Journal with which he was connected has got a great reputation and throughout the time he was in control of it, he maintained a very high standard

We wish you to convey to the members of the bereaved family our condolences."

BOOK REVIEW.

HINDU LAW IN BRITISH INDIA, by S. V. Gupte, B A, LL.B, published by N M. Tripathi, Ltd, Law Publishers, Princes Street, Bombay, 1945, 1148 pages. Price Rs 22

Mr. Gupte's book runs on lines more or less similar to those followed by Sir Dinshaw Mulla in his presentation of the principles of Hindu Law In the preface he states that he has attempted to state "as many rules and principles of Hindu Law" as it was possible to rescue from the morass of cases and decisions," in the form of Articles not meant as a code but as a statement of the results arrived at by him from an analysis of the case law. It may at once be conceded that Mr. Gupte has achieved a considerable measure of success in this method of presentation. The enunciations are generally accurate and his examination of case law is minute The decisions down to the end of 1944 have been taken note of and in some cases decisions rendered up to May, 1945, have also been referred to. In some matters the propositions as stated sound debateable It is stated that a co-parcenary does not require any nucleus of property. Co-parcenary is really a tenure and the explanation thereof in *Abraham's case* clearly contemplates the existence of property The meaning of "rina" found in *Nachimuthu's case*[1] as covering a wider range than the word "debt" and as therefore enlarging the scope of the son's pious obligation is set out on page xxv, but it is doubtful whether such a view could stand unqualified having regard to certain observations of the Privy Council in *Akhara Udasi Nirwani* v. *Surajpal Singh*[2]. It is observed on page 890 that anuloma marriages are not valid in Calcutta and the decision in *Nalinaksha* v *Rajani*[3] is cited in support. In that case itself on page 1399 it is observed "a marriage between a Brahmin and a Sudra woman though not an approved type of marriage is still a marriage and the children are legitimate." In regard to the share which an adopted son can claim when he co-exists with an after-born aurasa son of the adoptive father, three different enunciations are made At page 274 it is stated that he takes *half* the share of the natural son in Madras among dwijas At page 466 it is laid down that he takes *one third* the share of the aurasa son and at page 276 it is observed that his share is *one fourth* of that of the natural son.

In regard to the treatment of the principles Mr Gupte has divided the subject into five "Books" Book I gives a general introduction, books II and III deal with the principles relating to property, book IV deals with status and book V with a number of miscellaneous topics The texts of the important enactments modifying pure Hindu Law are also given in the form of appendices at the end of the discussion relating to each topic, with comments on the sections This is a feature of the book which is sure to enhance its utility The publication is a valuable addition to the list of books on Hindu Law and is sure to be highly helpful to lawyers and students alike

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Late Mr. R. Narayanaswami Iyer

THE

MADRAS LAW JOURNAL

I] JANUARY [1946

THE MARCH OF LAW: 1945.

"Variety is charming" It is an ancient adage and accounts for the beatitude of judge-made law. There is always something new rearing up and in consequence there is a continuous stream of fresh decisions. No less than forty-five judgments of the Judicial Committee alone have been reported in these columns in the course of the year An attempt is here made to indicate the march of law, in some of its main branches.

THE HIGH COURT ITS POWERS AND JURISDICTION.—The scope of the High Court's power to give directions in the nature of *habeas corpus* fell to be considered by the Privy Council in two cases. In *Emperor* v. *Sibnath Banerjee*[1], it is pointed out that though according to English Law, a discharge or an order directing a discharge under a writ of *habeas corpus* is final and not subject to appeal, yet in view of the special terms of section 205 of the Government of India Act, 1935, appeals to the Federal Court from such orders of the High Court will be competent. *King-Emperor* v. *Khwaja Nazir Ahmad*[2], explains that the functions of the police and the judiciary being complementary, the Court cannot interfere with investigation by the police into the circumstances of an alleged cognisable crime and the Court can be invited to give directions in the nature of *habeas corpus* only after its functions begin in regard to the matter, namely, after a charge is preferred before the Court. *Goonesinha* v. *de Kretser*[3], indicates that the High Court cannot and will not issue a writ of *certiorari* to bring up an order made by a Judge of that Court or of a Court of co-ordinate authority. The scope of the power of the High Court to review evidence in an appeal against acquittal is considered in *Nur Mohammad* v. *Emperor*[4], where it is laid down that the High Court can review at large all the evidence upon which an order of acquittal is founded and to reach the conclusion that upon that evidence the order of acquittal should be reversed. The ruling in *Lala Jairamdas* v. *The King-Emperor*[5], decides the important point that the High Court has no power to grant bail pending an appeal by special leave against a conviction from the High Court to His Majesty-in-Council.

THE BAR. ITS RIGHTS, PRIVILEGES AND DUTIES.—In *Parashram Deturam Shamdasani* v *King-Emperor*,[6] it is pointed out that an insult to counsel is very different from an insult to the Court itself and would not amount to a contempt of Court so as to justify the exercise by the Court of its summary jurisdiction regarding contempt. *District Judge of Anantapur* v *Vema Reddi*[7], decides that persons enrolled as advocates of any High Court under the Bar Councils Act are not prohibited from practising in the subordinate Courts of a province notwithstanding that they had been enrolled as advocates by the High Court in some other province. In *Ramanada Mannadiar*

1 (1945) 2 M L J 325 (P C)
2 (1945) 1 M L J 86 (P C)
3 (1945) 2 M L J 314 (P C)
4 (1945) 2 M L J 362 (P C)
5 (1945) 2 M L J 40 (P C)
6 (1945) 2 M L J 109 (P C)
7 (1945) 1 M L J 106 (F B).

v. *Ramaswami Aiyar*[1], the circumstances under which a legal practitioner can be permitted to appear against his former client in the same suit are considered and the rule is laid down that it depends entirely on the discretion of the Court to grant or withhold permission *Devji Goa* v *Tricumji Jiwandas*[2], is a decision of the Judicial Committee indicating *inter alia* that counsel who had assented to the addition of parties cannot be allowed to withdraw his assent after the conclusion of the arguments

CONSTITUTIONAL LAW.—In *Basdeo Agarwalla* v *The King-Emperor*[3], the principle is reiterated that where special statutory powers are conferred and specific provision is made in the statute as to the manner in which the provisions are to be exercised they should be exercised by the authority and in the manner specified in the statute and in strict conformity with the provisions thereof The decision of the Federal Court in *The Bank of Commerce, Ltd , Khulna* v *Kunja Behari Kar*[4], and *The Bank of Commerce, Ltd , Khulna* v *Nripendranath Datta*[5], have in some measure dispelled the element of uncertainty hanging round the validity of provincial legislations like the Bengal Money-lenders Act and the Madras Agriculturists' Relief Act in so far as they affected negotiable instruments The former case states that the validity of a provincial enactment in respect to a matter in the Provincial List is not finally settled by a decision that the legislation is in pith and substance one dealing with such a matter ; that the opening words of section 100 (3) of the Constitution Act 1935 impose a further limitation on the provincial power, namely, that the legislation shall not trench on a federal subject except only incidentally and that such incidental character must be determined with reference to their relation to the subjects mentioned in the Federal List In that view it was held that the provisions of the Bengal Act in so far as it affects claims on promissory notes are beyond the powers of the Provincial Legislature Following these pronouncements a Full Bench of the Madras High Court has held in *Yegnanarayana Somayajulu* v *Subbarayudu*[6], that sections 7, 8, 9 and 13 of the Madras Agriculturists' Relief Act, in so far as they run counter to sections 32, 79 and 80 of the Negotiable Instruments Act relating to promissory notes are *ultra vires* the Madras legislature An authoritative interpretation of the opening words of section 100 (1) and 100 (3) is found in *Governor-General in Council* v *Province of Madras*[7], where it is laid down that the effect of those words is that if the legislative powers of the Federal and Provincial Legislatures enumerated in lists I and II of schedule VII cannot fairly be reconciled, the latter must give way to the former, but that it should be first considered whether a fair reconciliation cannot be effected by giving to the language of the Federal Legislative List a meaning, which, if less wide than it might in another context bear, is yet one that can properly be given to it and equally giving to the language of the Provincial Legislative list a meaning which it can properly bear. In *Basanta Chandra Ghose* v *The King-Emperor*[8], it is ruled by the Federal Court that legislation relating to the efficient prosecution of the war, to wit, the Restriction and Detention Ordinance III of 1943, will be within the ambit of schedule VII to the Constitution Act as connected with " defence," a subject specified in entry 1 of List I The Judicial Committee's pronouncement in *Emperor* v *Sibnath Banerji*[9], brings into prominence the wide language of section 205 of the Constitution Act as relating to both the civil and criminal jurisdiction of the High Court, in consequence whereof an appeal could be taken to the Federal Court against the discharge or order directing discharge under a writ of *habeas corpus* and a further appeal could be taken therefrom to His Majesty in Council Another point decided is that section 49 (2) of the Constitution Act does not limit the operation of that section to matters with respect to which the Provincial Legislature has power to make law but has to be construed as providing an extensible limit and not a maximum limit, and that section 124 (2) of the Act should be understood as affording a means of such extension. Hence such matters as those which fell to be dealt with by the Governor under rule 26

1. (1945) 2 M L J 187
2. (1945) 1 M L J 305 (P C)
3. (1945) 1 M L J 369 (F C)
4. (1945) 1 M L J 24 (F C)
5. (1945) 1 M.L.J. 30 (F.C.).
6. (1945) 1 M L J 339 (F B)
7. (1945) 1 M L J 225 (P C)
8. (1945) 1 M L J 365 (F C)
9. (1945) 2 M.L J 325 (P.C).

of the Defence of India rules could be dealt with by him in the normal manner in which the executive business of the Provincial Government is carried on under the provisions of chapter II, part III of the Constitution Act and in particular under the provisions of section 49 and the rules of business made under section 59. The decision in *Secretary of State* v *J M Lall*[1], holds that the words "except as expressly provided in this Act" in section 240 of the Constitution Act are not to be understood as referring only to provisions of the Act outside the section but are apt enough to include a limitation or qualification on what follows in sub-section 1 by provisions later on found in the same section, so much so, sub-section 3 cannot be read so as to exclude the jurisdiction of the Court to determine whether or not the opportunity to the party affected to show cause against the taking of the suggested action has or has not been reasonable. In *Meads* v *King-Emperor*[2], the Federal Court recognises that section 270 of the Constitution Act is capricious in its operation and that it is difficult to make any logical grounds the basis of construing it; that the words "proceedings civil or criminal" in sub-section 1 do not include court-martial proceedings and that there was no context either in section 270 or elsewhere in the Constitution Act to make the words subsume such proceedings. *Suraj Parkash* v. *The King-Emperor*[3], holds that the offence under section 408 or 409 of the Indian Penal Code is not one in respect of which the protection afforded by section 270 of the Constitution Act can be claimed and that in cases to which the section applies it requires that if proceedings be instituted before the sanction is obtained such proceedings are wholly void and fresh proceedings must be instituted after the sanction is obtained. In *Manicka Sundara Bhattar* v *R S Nayudu*[4], it is held that section 298 (2) (*b*) of the Constitution Act enacting that nothing therein shall affect the operation of any law which recognises the existence of some right, privilege or disability attaching to members of a community by virtue of any personal law or custom is really a qualification of sub-section 1 which lays down that no subject of His Majesty domiciled in India shall on grounds only of religion, place of birth, descent, colour etc, be ineligible for any office under the Crown or be prohibited on any such grounds from acquiring, holding or disposing of property or carrying on any occupation, trade, business or profession in British India, and has nothing to do with the powers of the Legislature to legislate with regard to religious institutions. In *Umayal Achi* v *Lakshmi Achi*[5], it is held that the effect of section 317 of the Constitution Act is *prima facie* to establish the uninterrupted continuation of the Indian Legislature and its legislative procedure notwithstanding the formal repeal of the existing legislation by section 321 of the Act. The judgment of the Judicial Committee in *The King-Emperor* v. *Benoari Lal Sarma*[6], sets out the principle that the question whether an ordinance is *intra vires* or *ultra vires* does not depend on considerations of jurisprudence or of policy but depends simply upon examining the language of the Government of India Act and of comparing the legislative authority conferred on the Governor-General with the provisions of the ordinance by which he is purporting to exercise that authority.

CRIMINAL LAW.—A wholesome and salutary principle of jurisprudence is recognised in *Alexander Stirologo* v *The King*[7], where it is laid down that if a conviction has resulted from regarding as criminal an act which is authorised by law, that does amount to a breach of natural justice, because it means that there has been a conviction for what the law does not recognise as an offence. In *Mahbub Shah* v. *King-Emperor*[8], an authoritative exposition of section 34 of the Indian Penal Code is to be found. The Judicial Committee points out that the section lays down a principle of joint liability in the doing of a criminal act and that the essence of the liability is to be found in the existence of a common intention animating the accused leading to the doing of a criminal act in furtherance of such intention; that the

1 (1945) 2 M L J 270 (F C)
2 (1945) 1 M L J 31 (F C)
3 (1945) 1 M L J 371 (F C)
4 (1945) 1 M L J 372
5 (1945) 1 M L J 108 (F C)
6 (1945) 1 M L J 76 (P C)
7 (1945) 2 M L J 446 (P C)
8 (1945) 2 M.L.J 144 (P C)

intention required need not be "the common intention of all" or "an intention common to all" but only implies a pre-arranged plan in pursuance of which a criminal act is done in concert The ruling in *Pandit Kishori Lal* v *The King-Emperor*[1] explains that though when first enacted the sentence of transportation meant transportation beyond the seas and section 58 of the Indian Penal Code was intended to provide only for temporary detention of prisoners awaiting transportation, still having regard to Acts passed since the Penal Code, regarding the penal system, section 58 can no longer be construed as providing only for the transitory detention of prisoners awaiting conveyance to a penal settlement outside India In re *Jesudas Appadurai Pillai*,[2] reiterates the principle that the bribe-giver is in the position of an accomplice and as a matter of expediency his evidence should be corroborated in material particulars implicating the accused *Suraj Parkash* v. *King-Emperor*[3], lays down that an offence under section 408 or 409 of the Code is not one in respect of which the protection of section 270 of the Government of India Act can be claimed In re *Rami Reddi*[4], points out that since under section 410 property criminally misappropriated is stolen property, there is no logical reason why a man who is in possession of goods soon after they have been criminally misappropriated, if he cannot account for his possession, should be regarded as less likely to have misappropriated them or to have received them knowing them to be stolen than if they had been the subject of theft

EVIDENCE.—Two decisions of the Privy Council on interesting questions relating to the law of evidence fell to be rendered in the course of the year In *Mohamed Sugal* v *The King*,[5] the principle is laid down that once there is admissible evidence it could be acted upon; corroboration unless required by statute goes only to the weight and value of the evidence In regard to the reception of the unsworn testimony of a child it is pointed out that whereas in English law such evidence must always be corroborated in some material particular implicating the accused, in India, there is no such provision and the evidence is made admissible whether corroborated or not, with the result that though it is a sound rule in practice not to act on the uncorroborated testimony of a child, whether sworn or unsworn, it is only a rule of prudence and not of law *Daniel Youth* v *The King*[6], elucidates two points In the first place the Judicial Committee points out that where there was evidence against the accused on which the jury were entitled to convict, its strength is not a matter for their Lordships to determine unless some step has been taken which is contrary to natural justice or some grave and substantial injustice has been done Secondly, it is made clear that though in all joint trials the mind of the jury may be influenced by the reception of evidence which is only admissible against one of the accused, the practice in England, has always been to admit such evidence leaving it to the presiding Judge to warn the jury that the evidence must not be used to strengthen the case against or to lead to the conviction of the prisoner against whom it is not admissible. *Obanna* v *Gangiah*[7], holds that a statement by a brother of the plaintiff, a person jointly interested in the subject-matter of a litigation, on a former occasion before a revenue officer, on a question of heirship to a deceased person, would be admissible in a later litigation concerning the same question under section 18 (1) of the Evidence Act. In In re *Gangavva*,[8] it is stated that the word "confession" in section 30 cannot reasonably be interpreted to mean a confession of any offence for which the accused persons are being tried but only of the very offence for which they are being tried, the term "offence" always including abetments and attempts The ruling in In re *Rami Reddi*,[4] emphasises that the illustrations to section 114 are not exhaustive and do not restrict the presumptions regarding the existence of facts to the facts covered by the illustrations, but indicate on the

1 (1945) 1 M L J 399 (P C)
2 (1945) 1 M L J 197
3 (1945) 1 M L J 371 (F C).
4 (1945) 1 M.L J 202.
5 (1945) 2 M L J 493 (P C)
6 (1945) 2 M L J 578 (P C)
7 (1945) 1 M L J 378
8 (1945) 2 M L J 479

contrary that, if a question arises as to whether the existence of a particular fact may be presumed, the criterion must be whether the Court thinks it likely to have happened, regard being had to the common course of natural events, human conduct and public and private business in their relation to the facts of the particular case. *Bhupatiraju Ramaraju*, In re[1], brings to the fore the principle, that, since an inference under section 114 that the accused had committed theft, etc, could be drawn only if he is not able to explain his possession where an explanation is called for, no such presumption could be drawn where the accused is a born deaf and dumb mute. The ruling in *Jesudas Appadurai Pillai*, In re,[2] elucidates the useful point that assuming that an accomplice can corroborate himself under section 157, which is highly doubtful, the statement made by him (a bribe-giver) to be admissible must have been made at the time of the event or shortly after when a reasonable opportunity for making it presents itself

TORTS—In *Lala Punnalal* v *Kasturichand Ramji*[3], it is pointed out that there is nothing like an exhaustive classification of torts beyond which Courts should not proceed, that new invasion of rights devised by human ingenuity might give rise to new classes of torts and that malicious house search may constitute a tort. The decision also affirms that the award of exemplary damages in cases where the defendant has acted contumeliously is sanctioned both under English as well as Indian Law In *Subbiah Reddy* v *Jordon*[4], the Privy Council points out that the rule in *Flint* v *Lovell*[5], that an appellate Court will be disinclined to reverse the finding of a trial Judge as to the amount of damages merely because they think that if they had tried the case in the first instance they would have given a lesser sum, cannot apply in its full rigour in British India inasmuch as civil suits are not here tried with a jury and trial Judges have less experience in assessing damages for torts than they have in England, where such claims are very common The decision in *Kandia Goundan* v *Palani Goundan*[6], deals with the interesting question of the liability of a person changing the course of a channel, for damages caused to a neighbouring owner, where the change in the course of the channel was not the primary cause of the damage but an extraordinary rainfall which would have rendered the damage inevitable even if there had been no change of course The principle was laid down that before the plaintiff can succeed in a suit for damages one of the things he should prove is that but for the defendant's act the phenomenon would have passed him scatheless

HINDU LAW—In *Simhadri Raju* v *Satyanarayana Pantulu*,[7] it was held that the Privy Council decision in *Bhagwan Singh* v *Bhagwan Singh*[8], in relation to the rule that the adopted son should bear the reflection of a son did not go beyond the cases of the daughter's son, the sister's son, and the mother's sister's son and therefore the decision in *Minakshi* v *Ramanadha*[9], that there can be no valid adoption unless a legal marriage would have been possible between the person to whom the adoption is made and the mother of the adopted boy in her maiden state, except where there is a custom recognising departures, remains good law, with the result, that the adoption of a boy whose mother in her maiden state and the person for whom the adoption was made were sagotras, was valid, a custom permitting such adoptions being made out The decision in *Subramanian* v *Muthia Chettiar*[10], is far-reaching, in so far as it holds that on adoption by a widower the adoption will take effect as if the son had been adopted in the lifetime of the predeceased wife of the adoptive father, so much so the adopted son will divest all intermediate estates which had vested before his adoption subsequent to the death of the adoptive mother either by inheritance or by a custom of reverter to the parental family of the stridhana of a woman dying sonless

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1 (1945) 2 M L J 407
2 (1945) 1 M L J 197
3 (1945) 2 M L J 461
4 (1945) 2 M L J 257 (P.C)
5 (1935) 1 K B 354
6 (1945) 2 M L J 245
7 (1945) 2 M L J 228
8 (1899) L R 26 I A 153 I L R 21 All. 412 (P C)
9 (1888) I L R 11 Mad 49 (F B)
10 (1945) 2 M L J 337

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One of the points decided in *Nagappa Chettiar* v *Subramaniam*[1] was that a Sudra can marry a dancing girl inasmuch as it would be against public policy to say that a dancing girl shall not marry at all and there is nothing in the Hindu Law operating as an impediment to a Sudra marrying her In *Narayanan Nambudiri* v *Unnimaya Antharjanam*[2], it was held that a promise to pay a particular sum of money or to settle some property in consideration of the promisee marrying the son or daughter of the promisor is valid and enforceable and is not immoral or opposed to public policy *Thangammal* v. *Gengayammal*[3] points out the limits subject to which a right of divorce by reason of custom will be available to Hindus and holds that if custom in a commuunity permitted divorce where both the spouses desired it on account of disagreement between them, such custom will not be illegal

The decision of the Full Bench in *Subbana* v *Balasubbareddi*[4], indicates that the view suggested in *Peddayya* v *Ramalingam*[5] that a co-parcener may renounce his interest in favour of any of the other co-parceners and that the benefit of the renunciation will appertain only to such member is no longer tenable The Full Bench points out that a member of a joint Hindu family governed by the Mitakshara law cannot give his interest in the family estate to one or some of several coparceners only so long as they remain joint in estate but a relinquishment of his interest would operate for the benefit of all the members. *Suryanarayanamurthi* v *Veerraju*[6], reveals the interesting result that the assets reverting to a coparcener on the annulment of his adjudication as insolvent come back to him as joint family property only and not as his separate property The ruling in *Subbareddi* v *Venkataramanayammi*[7], discloses that though the manager of a joint Hindu family cannot revive a time-barred debt so as to affect the other members of the family, he will be competent to renew a debt which will be enforceable by reason of section 4 of the Limitation Act, by the execution of a fresh promissory note on the day the Court reopens with a view to stave off the suit In *Bavani Ammal* v *Nataraja Aiyar*[8], it is made clear that where an endorsee for collection has obtained a decree against the manager on a promissory note executed by him, there is no impediment to the original creditor filing a suit on the original cause of action against the other members of the joint family seeking to make their shares of the family property liable for the debt, provided that the decree already obtained by the endorsee is assigned to the original creditor

In *Mt Inder Kuer* v *Mt Pirthipal Kuer*[9], the Judicial Committee reaffirms the principle that though there is no evidence of actual partition of the joint estate by metes and bounds there can still be a partition, as for instance by the defining of shares, inasmuch as physical division of property is not necessary But as pointed out in *Appavu* v *Manickam Pillai*[10], a partition of some of the assets does not of itself imply a division in status, nor the fact that the income of the agricultural lands is divided, nor the mere fact of the division of the outstandings and moveable property The ruling in *Subbarami Reddy* v *Chenchuraghava Reddy*[11], lays down that a grandfather has no power of imposing a partition so as to effect a severance *inter se* as between his minor grandsons inasmuch as his position is not analogous to that of a father, the latter being the natural guardian of his sons whereas a grandfather cannot be one unless appointed by the Court *Nagappa Chettiar* v *Subramaniam*[1] decides that in a minor's suit for partition what the Court has to decide is whether a partition is in the best interest of the minor; that, while mere speculation in shares by the father may not induce such conclusion the father's illicit relationship with a dancing girl would be another matter

Two decisions relating to the law of debts may be noted The liability of a son by reason of pious obligation to pay a suretyship debt incurred by his father

1 (1945) 1 M L J 452
2 (1945) 1 M L J 145
3 (1945) 1 M L J 299
4 (1945) 1 M L J 140 (F B)
5 (1888) I L R 11 Mad 406
6. (1945) 1 M.L J 292.
7 (1945) 1 M L J 38
8 (1945) 1 M L J 165
9 (1945) 2 M L J 182 (P C)
10 (1945) 2 M L J 504
11 (1945) 1 M L J 151

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is considered in *Kesar Chand v. Uttam Chand*[1], where the Privy Council points out that to make the ancestral property liable there must in reality be a debt due by the father, and when the father executed a security bond, not for the payment of any debt due by himself at that time, but for the payment of a debt due by others the doctrine of pious obligation cannot make the transaction binding on the ancestral property *Muthachi* v. *Kandasami Muthirian*[2] holds that when the father of an undivided son executes a mortgage and the mortgagee brings a suit on it against the son after the father's death and the son denies the consideration for the mortgage, the onus of proving consideration is on the mortgagee and no duty is cast on the son to prove want of consideration

The pronouncement of the Federal Court, in *Umayal Achi* v. *Lakshmi Achi*,[3] elucidates that the expression "separate property" may be the antithesis of three other expressions "ancestral property", "coparcenary property" and "joint family property", that the particular sense it bears will depend on the context in which it appears and that the property held by a person as the last surviving co-parcener of a joint family cannot be regarded as "separate property" within the meaning of section 3 (1) of the Hindu Women's Rights to Property Act, 1937, wherein the term refers to property in respect of which the son of the surviving co-parcener would not be entitled to co-parcenary rights but only to a right of inheritance on the father's death if he survived him. The decision also makes it clear that the distribution of the distributable moveable property of a person, where-ever they may be situate, is ordinarily governed by the law of the domicile of the owner at the time of his death and that it can make no difference for this purpose whether the law of domicile rests on common law or statute law In *Velayudhan Chetty* v *Commissioner of Income-tax*[4] it is held that where a Hindu father gives his self-acquired property to his son, the latter will take it only as ancestral property, unless it is apparent that the father intended the gift to be made personal to the son *Venkata Veeraraghavayya* v *Sreenivasa Rao*[5], reaffirms the principle that an illegitimate son cannot claim rights of succession to collaterals.

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In *Periambala Chettiar* v *Sundarammal*[6] the principle is laid down that the right which a Hindu widow possesses to be maintained out of the property of her deceased husband is not forfeited by conduct which disqualified her from being separately maintained by him, that her right only remains suspended and the suspension ceases when her husband dies Consequently her husband cannot execute a will which can defeat such a right *Venkatappadu* v *Atchayya*[7] deals with a problem that does not often occur It holds that in spite of an illatom son-in-law living jointly with the heirs of his father-in-law, he cannot in the absence of a custom be regarded as a co-parcener with them, so much so his widow cannot found any claim against them for maintenance as the widow of a co-parncener.

The ruling in *Seetha Bai* v. *Narasimha Shet*[8] shows that a guardian may be appointed in respect of co-parcenary property, as for instance, where the co-parcenary consisted of two minors and it was apparent that there was no one who could be in juridical possession of the property as the karta and the wives of the minors' father were quarrelling with each other. The powers of a *de facto* guardian fell to be examined by a Full Bench in *Pundarikakshayya* v *Sreeramulu*[9] and it was held that a *de facto* guardian cannot bind the minor's estate by a promissory note executed by him in the minor's name even in respect of money borrowed for necessary purposes and consequently a sale by him in discharge of such a promissory note which in its turn had been executed to discharge a still earlier debt binding on the minor under a promissory note made by the minor's adoptive father could

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1 (1945) 2 M.L.J 160 (P C)
2 (1945) 1 M L J 207
3 (1945) 1 M L J 108 (F.C)
4 (1945) 1 M L J 149
5 (1945) 1 M L.J. 288
6 (1945) 1 M L J. 58
7 (1945) 1 M L J 134
8 (1945) 1 M L J 60
9 (1945) 2 M L J. 375 (F.B.)

not convey a valid title. It was also held that a *de facto* guardian cannot by executing a promissory note extend the period of limitation in respect of the antecedent debts of the minor's deceased adoptive fathr *Bapanayya* v *Pundarikakshayya*[1] in applying the principle of the Full Bench decision points out that where an alienation of the minor's property by a *de facto* guardian is set aside the alienee will be accountable for mesne profits from the date when possession was delivered to him

The decision in *Bishun Singh* v *Thakurji Mangala Nain*[2] recognises that in between the qualified estate which a widow ordinarily takes and the absolute estate which by express conferment she can get, it is possible to bestow on her without conferring an absolute estate full power of transfer over the property which she inherited from the executant as his widow In *Akkamma* v *Pichamma*[3] it is made clear that when a person puts forward a claim based on a pre-existing estate, and that estate is to some extent recognised by a compromise, the compromise has to be interpreted in the light of the claim put forward and the estate which will pass will be similar to that which was claimed and the Court will not look beyond it except where it contains no clear indication of the title given to the widow *Shanmughasundaram Pillai* v *Parvathi Ammal*[4] holds that though an alienation by one of two widows, even if it be for a necessity, is not binding on the estate, still the alienation is not void but is only voidable and can be avoided only by the widow or the reversioners and not by third paties. *Dharma Rao* v *Veeriah*[5] deals with a question on which judicial opinion has been conflicting and holds that where a surrender has been made in good faith, the fact that some portion of the family property had passed out of the family by mistake under an involuntary alienation will not make the surrender invalid The decision also lays down that a surrender by a Hindu widow which was valid at the time it was made cannot become invalid because, subsequent to the surrender, legislation made some other person the nearest reversioner. In *Sethuroyar* v *Karuppayammal*[6] it is pointed out that though a declaration may be for the benefit of a person who turns out to be the ultimate reversioner, the Courts will not entertain a suit by a remote reversioner unless the nearest reversioner had refused to bring such a suit or was colluding with the widow or the alienees or was otherwise incapacitated

INSOLVENCY LAW —The decision in *Pathi Gundeppa* v *Official Receiver*[7] lays down that where the Official Receiver applied in the first instance for an order to set aside certain alienations of moveables by the insolvent and after it was ordered applied for an order directing the alienee to pay mesne profits in respect of the items sold such profits could be allowed only for a period of three years before the date of the application In *Jaina Muhammad Sheriff Maricair* v *Official Assignee*[8] it is pointed out that a suit by a creditor to set aside alienations by the insolvent is not a suit against the property of the insolvent but one against third parties and the object of the suit is to secure such property for the benefit of the general body of creditors and the leave of the insolvency Court is not therefore necessary for bringing such a suit The ruling in *Official Receiver* v *Gopalakrishnayya*[9] lays down that the decision in *Mahomed Siddique Yousuff* v *Official Assignee of Calcutta*[10] does not apply to orders of adjudication under the Provincial Insolvency Act and therefore an order of adjudication under the latter Act based on an act of the insolvent held by the Court to be one of fraudulent preference does not preclude the transferee from showing by independent proceedings that the transaction did not constitute a fraudulent preference. *Venkata Hanumantha Rao* v *Ramakrishnayya*[11] decides that a suit for the recovery of a sum of money as rent or as damages for the use and occupation of the plaintiff's land by the defendant—the period covered being after the adjudication of the defendant as insolvent— is not affected by section 34 (1) as the claim is in the nature of unliquidated damages, or, by section 34 (2) as the suit years

1 (1945) 2 M L J 508
2 (1945) 1 M L J 91 (P C)
3 (1945) 2 M L J 266
4 (1945) 2 M L J 173.
5 (1945) 1 M L J 423
6 (1945) 2 M.L J 442
7 (1945) 2 M L J 557
8 (1945) 2 M L J 318
9. (1945) 1 M L J 17
10 (1943) 2 M L J 160 (P C)
11 (1945) 1 M L J 379

were after the adjudication In *Ratnavelu Chettiar* v *Franciscu Udayar*[1] it is declared that once an adjudication is annulled unconditionally under section 37 it must be taken that there was never any adjudication at all subject only to the exception laid down in section 37 *Suryanarayanamurthi* v *Veerraju*[2] illustrates an aspect of section 37 when it holds that on reverter under the section on annulment of adjudication of a member of a joint Hindu family, his assets in the hands of the Official Receiver come back to him as joint family property and not as his separate porperty. In *Official Receiver* v *Neminadha Mudaliar*[3] it is pointed out that the insolvency Court has jurisdiction to pass an order for payment of mesne profits The ruling in *Subramania Aiyar* v *Valliamma*[4] lays down that section 68 definitely contemplates the insolvent as a person who might be aggrieved by an act or decision of the receiver and hence his widow as his legal representative will have *locus standi* to apply to have a sale of the insolvent's property by the receiver set aside In *Velayudha Naicker* v. *Annamalai Chetty*[5] it is explained that in computing the three years' period of limitation which the plaintiff gets under section 19 of the Limitation Act by reason of the acknowledgment of liability in the schedule, the period during which the defendant was an insolvent will have to be excluded and there is nothing in section 78 to preclude that view

TRANSFER OF PROPERTY ACT —In *Zafrul Hasan* v *Farid-ud-din*,[6] it is made clear that persons who have acquired an interest in the property in dispute *pendente lite* could not avail themselves of section 41 or 42 of the Act. *Zogu Rao* v. *Venkatakrishnayya Naidu*,[7] is a decision on the applicability of section 43 and lays down that there is no duty cast on a vendee to make any enquiries to which section 43 applies and mere notice of encumbrances on the part of the vendee would not make the transaction of sale any the less a sale free of encumbrances, if the document says so. The decision also makes it clear that before the section can apply it is essential that there should be a misrepresentation, fraudulent or erroneous, about the right to transfer property The ruling in *Duraiswami Reddi* v *Angappa Reddi*[8], lays down that under section 48 where there are two registered sale deeds in respect of the same property, that which was first executed has priority over the other though the latter might have been registered earlier In *Kulandaivelu Pillai* v *Sowbhagyammal*[9] it is held that there is no conflict between sections 52 and 100 and that section 52 expressly provides for all cases of decrees in suits relating to immoveable property whether involving a mortgage or charge or recovery of possession by enacting that no party to the suit can transfer or deal with the property so as to affect any other party thereto under any decree or order which may be made therein Nor does the section make any exception in favour of a *bona fide* transferee for value with notice *Nallakumara Goundan* v *Pappayi Ammal*[10] completes the picture by indicating that the explanation added to section 52 by the Amending Act of 1939 has made it clear that the doctrine of *lis pendens* applies to all alienations made from the date of the plaint itself. *Rajagopala Chetty* v *Kesava Pillai*[11] reaffirms the view that section 100 cannot be read without regard to what is contained in section 52 In *Venkatappa Naidu* v. *Chinnappa Naidu*[12], the view is repeated that section 53-A has no retrospective operation In *Paparao* v *Polinaidu*[13] it is explained that the fact of a buyer's knowledge of a defect in the seller's title prior to the purchase does not prevent him from suing for damages for breach of the covenant of title and that where several items of properties are sold and the purchaser sues for recovery of damages for breach of covenant of title in respect of one item, he can have the contract rescinded as regards that one item only. *Somu Achari* v *Singara Achari*[14] points out that the mere execution of a promissory note for the amount of the unpaid purchase money is not a contract to the contrary within the meaning of

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1 (1945) 1 M.L.J 472.
2. (1945) 1 M L J 292
3 (1945) 1 M L J 469
4 (1945) 1 M L J 315
5 (1945) 1 M L J 298
6 (1945) 1 M L J 12 (P C)
7 (1945) 2 M L J 478
8 (1945) 1 M L J 425
9 (1945) 1 M L J 261
10 (1945) 2 M L J 72
11 (1945) 1 M L J 57
12 (1945) 1 M L J 158
13 (1945) 1 M L J 323
14 (1945) 2 M L J 17

section 55. *Sivaramayya* v *Venkayya*[1] recognises that the contract to the contrary contemplated in section 56 need not be express but may be implied In *Matapalli Raju* v *Venkataraghavayya*[2], it is recognised that section 60 does not override the provisions of Order 23, rule 1 (3) of the Civil Procedure Code The decision in *Ramakrishna Naidu* v *Venkataswami Naidu*[3], lays down that a person who pays off a prior mortgage as part of a sale transaction though before the execution of the sale deed will be a person having an interest within the meaning of section 91 in regard to the mortgage paid off, on the sale failing to take effect The judgment of the Judicial Committee in *Lala Man Mohan Das* v *Janki Prasad*[4], states firstly that a mere volunteer discharging a mortgage debt binding on the property could not claim subrogation ; secondly, that even prior to the amendment of section 92 in 1929, to support the claim for subrogation of one who has lent money to a mortgagor to redeem a mortgage, an agreement express or implied that the lender shall be subrogated should be proved ; and lastly, that after the amendment of the Act the right of subrogation can be claimed by the lender only if the mortgagor has by a registered instrument agreed that he shall be subrogated and such relief can no longer be claimed or granted on very slight evidence of what may be described as the semblance of an agreement. *Venkatachala Pillai* v. *Rajagopala Naidu*[5], points out that the words " by operation of law " occurring in section 100 include a charge brought into being by a decree of a competent Court. The decision of the Privy Council in *Ramachandra Jiwaji* v *Laxman Shrinivas*,[6] indicates that though a gift may be induced by undue influence it does not necessarily follow that it was not made " voluntarily " within the meaning of section 122

LAND ACQUISITION.—The ruling of the Full Bench in *Suryanarayana* v *Province of Madras*,[7] deals with the scope of section 6 of the Land Acquisition Act It lays down that a declaration under section 6 (1) is final and it is not open to the Court to inquire whether the land was really needed for a public purpose ; that a suit would no doubt lie if the government directed the acquisition in fraud of its powers but in the absence of any such charge the government's action in directing the acquisition cannot be challenged in a Court of law and it is sufficient compliance with the provisions of the proviso to section 6 (1) if any part of the compensation, even if it be an anna, is paid out of the public fund

LAND TENURES AND IRRIGATION LAW—In *Secretary of State* v *Krishna Rao*,[8] the Judicial Committee points out that a grant of shrotriem inam may be of either the revenue from the land only—the melvaram—or of the proprietary rights also, namely, the rights which the government had in the land ; that where the original a grant gave only the melvaram, the subsequent proceedings of the inam commission . and the title granted by them will not change its character, and that where no sanad is produced, the inam title deed and the entries in the inam register are evidence and indeed the best evidence of the true character of the grant The decision also lays down that a grant of the proprietary interest includes the grantor's right in tanks, river and channel porambokes. *Venkata Kotayya Sastri* v *Province of Madras*[9] holds following the *Swamigal case*[10] that in the case of a whole inam village there is a presumption that the grant comprises the bed and banks of any irrigation channel passing through the village, so far as its course lies in such village, and that if the government relied on a reservation of the right in the channel it is for them to allege and prove it ; that neither the fact that the channel 35 miles in length passed first through a number of government villages and then for a mile only flowed through the inam village again passing through other government villages nor the circumstance that at the time of the inam grant the lands of the village were dry would rebut the presumption of the bed of the channel being included in the grant. In *Sri*

1 (1945) 2 M L J 412
2. (1945) 1 M L J 212
3 (1945) 1 M L J 154
4. (1945) 1 M L J 97 (P C)
5 (1945) 2 M L J 388
6 (1945) 1 M L J 253 (P C)
7 (1945) 2 M L J 237 (F B)
8 (1945) 2 M L J 352 (P C)
9 (1945) 2 M L J 250
10 (1942) 2 M L J 367 (P C)

Ekambareswaraswami Temple v. *Provincial Government of Madras*,[1] it is pointed out that a tank wholly situate within an inam village as well as that portion of the channel feeding the tank which lies wholly within the village would pass to the inamdar unless there is something in the circumstances of the case suggesting a reservation by the government in its own favour of the particular tank or channel. It is further pointed out that the cultivation of more lands or the raising of a second crop by the inamdar by thrifty user of water in the tank will not justify the levy of irrigation cess, so long as the feeder channel was not interfered with at its entry into the village or above and that the mere fact that the storage capacity of the tank has been increased by either strengthening the bank or increasing the height of the tank bund is no ground for the levy of water cess

ESTATES LAND ACT —In *Seshagiri Rao* v *Rammayya*[2], it is laid down that what had been made an estate by reason of section 3 (2) (*b*) and (*e*) could not have been intended to be stripped of its character by the definition of " ryoti land " in section 3 (16) and that it is only where the lands are held under a tenure which the landholder can put an end to by a unilateral act of his own, that the tenant having possession does not possess occupancy rights therein, but not where the lands are held under a tenure which cannot be terminated by the landlord. The ruling in *Vidya Sankara Bharathi Swamivaru* v. *Ramamurthi*[3] points out that the Explanation I to section 3 (2) (*d*) added by section 2 of Madras Act II of 1945 is not only retrospective but also expropriatory *Rajayya Nandiar* v. *Laxmana Ayyar*,[4] holds *inter alia* that the proviso to section 3 (10) (*b*) (iv) will apply only where the kudivaram was acquired by a landlord at a sale for arrears of rent, that is, at a sale held by a Court or revenue officer acting under the powers conferred by law and not a private sale by the owner of the kudivaram The decision further indicates that the conversion of private land into ryoti land may be by express grant or possibly by leasing them along with admittedly ryoti lands under a single patta with terms which are inconsistent with the landlord's absolute right in them In *Vaidyanatha Mudaliar* v. *Vedachala Mudaliar*,[5] it is pointed out that the mere fact that a person who happens to be a ryot is under an obligation to pay some amounts to a landholder in respect of certain non-ryoti lands in the estate does not make the amounts " rent " within the meaning of section 3 (11) *Sethu Chettiar* v *Sarangapani Aiyangar*,[6] decides that padugai lands even if not part of the river bed may be part of the river bank, in which case also the land would not be comprised within the definition of ryoti land in section 3 (16) In *Yellayya* v *Pydamma*,[7] it is held that section 145 does not prevent a landholder from recognising any person's claim to have a right to property by devolution of interest and does not provide for a quasi-judicial inquiry by him *Ahmed Batcha Sahib* v *Mohamed Haneef Sahib*,[8] reiterates that section 145 as amended in 1934 is not retrospective In *Sarvarayudu* v *Venkataratnam*,[9] it is laid down that section 192 making applicable the provisions of the Civil Procedure Code must be read subject to section 132 which makes chapter VI of the Estates Land Act applicable to execution by a revenue Court thereby providing a complete code of procedure

TRUSTS —In *Ramanathan Chettiar* v *Palaniappa Chettiar*,[10] it is pointed out that an intention to create a trust and transfer of property are equally essential for public as well as private trusts, hence, a mere credit entry in the account books of a firm without setting aside and appropriating the sum credited is not sufficient to create a valid trust The principle is also stated in *Nemathanpatti Annadhana Chatram* v. *Raman Chettiar*,[11] where it is held that mere credit entries in one's own account are not sufficient to create a trust unless corresponding sums are actually set apart and appropriated to the charities, so much so, the mere fact that the expenses relating

1 (1945) 1 M L J. 317
2 (1945) 2 M L J 214
3 (1945) 2 M L J 207
4 (1945) 2 M L J 148
5 (1945) 2 M L J 312
6. (1945) 2 M L J 380.
7 (1945) 1 M L J 42
8 (1945) 2 M L J 158
9 (1945) 1 M L J 332
10 (1945) 2 M L J 164
11 (1945) 2 M L J 525

to the construction of a building were debited by a testator in his lifetime in a folio headed "chatram building account" cannot be taken as showing that such expenses came out of any trust fund so as to make the building the property of the trust In *Man Mohan Das* v *Janki Prasad*,[1] the Privy Council points out that where the administration of a trust is vested in co-trustees they must execute the duties of the office collectively in a joint capacity and the execution by one of them of a conveyance even during an emergency would be ineffective in conveying a valid claim to the property. The ruling in *Sri Vedapuriswarar Temple* v *Sundaresa Gurukkal*,[2] recognises that a decree can be validly passed against a *de facto* trustee of a temple who is in possession and management thereof so as to bind the temple

CONTRACTS —In *Venkatappayya* v *Venkatappayya*,[3] it is held that as section 25 (3) of the Contract Act is based on agreement, no claim can be founded on the provision where no agreement exists The scope of the words "when the contract becomes void" in section 65 fell to be examined in *Venkatappa Naidu* v *Chinnappa Naidu*,[4] where it is held that "void" means unenforceable by substantive law and not unenforceable by reason of procedural regulations such as the Limitation Act *Suryanarayana* v. *Purnachandra Row*,[5] holds that the principle of section 72 will apply so as to enable a person to recover the sum paid by him as purchaser of a property subject to a mortgage, in the *bona fide* belief that the mortgage was valid, from the mortgagee, on the mortgage being found invalid later consequent on the mortgagor's title to the property being negatived In *Samuel Fitz & Co* v *Standard Cotton & Silk Weaving Co*,[6] where a contract for the supply of goods at Madras according to specification, for the purpose of sale in Australia, was terminated by the defendants on a prohibition by the Australian government of the importation of such goods into that country, and an action for the recovery of damages was brought, it was held that the Court could not read into the contract an implied term that its enforceability was to be dependent upon the ability of the defendants to find customers for the goods, that such a term was not of the foundation of the contract and that in such a case the measure of damages is the profit which the plaintiff would have made had the contract been carried out The scope of the doctrine of "frustration" is elucidated in *Twentsche Overseas Trading Corporation, Ltd* v *Uganda Sugar Factory, Ltd*,[7] where Lord Wright observed "The word 'frustration' is used in a technical legal sense. It is a sort of shorthand, it means that a contract has ceased to bind the parties because the common basis on which by mutual undertaking it was based has failed It would be more accurate to say not that the contract has been frustrated but that there has been a failure of what in the contemplation of both parties would be the essential condition or purpose of the performance" In *Ranganatha Iyer* v *Indo Union Assurance Co*, *Ltd.*,[8] the principle is recognised that where there is a mere contract of agency, with no service or subordination, the Court will hold that there is no implied contract that the agent is to be supplied with the means of earning his commission and hence where the principal company on the advice of experts was run as a "closed fund" taking on no new business the agent cannot recover damages because of the company not running for the period certain for which he was employed as agent The difference between authority to sell and authority to find a purchaser is examined in *Appa Rao* v *Gopal Das*,[9] where it is held that if an agent is authorised to negotiate and complete a sale for a specified price within a particular time it gives him authority to enter into a contract for a sale whether it be for immoveable or moveable property *Sokrabji* v *Oriental Government Security Life Assurance Company, Ltd*,[10] recognises that *prima facie* the right of an agent to commission ceases on the termination of his employment except in cases in which the whole of the work necessary to earn the commission has been done by the agent before the termination of his employment.

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1 (1945) 1 M L J. 97 (P C)
2 (1945) 2 M L J 399
3. (1945) 2 M L J. 405
4 (1945) 1 M L J. 158
5 (1945) 2 M.L J 513
6 (1945) 2 M L J 24
7 (1945) 1 M L J. 417 (P C)
8 (1945) 2 M L J 297
9. (1945) 2 M L J 363
10 (1945) 2 M L J 297 (P C)

In *Periambala Chettiar* v. *Muhammad Ghouse Saheb*[1], it is pointed out that though there was no provision in the Indian Contract Act corresponding to section 22 of the Partnership Act, that section has not effected any change in the law and the principle has always operated that the act of a partner in order to bind the firm should be done on behalf of the firm but that it is not necessary that it should also purport to be so done *Sundaram Chettiar* v *Ittimathu*[2], decides that section 69 of the Partnership Act only prohibits a suit by the members of an unregistered firm and that, where a suit is filed against certain persons who carry on business as a firm without getting themselves registered and a decree is passed, they are entitled to appeal and their being an unregistered firm is no bar to the exercise of such right

SPECIFIC RELIEF —In *Satyanarayanamurthi* v *Venkata Pichaiah*[3], it is decided that in decreeing a suit for specific performance of an agreement by the defendants to execute in plaintiff's favour a mortgage of immoveable properties to secure the moneys lent to them it will not be proper to pass a mortgage decree. *Murugappa Naicker* v *Padmanabha Mudaliar*,[4] holds that section 9 of the Specific Relief Act does not preclude a party to a suit under that section from subsequently putting forward his title by virtue of long possession, as the only finding in the summary suit which will be conclusive will be that the plaintiff was not in possession within six months of that suit In *Subbarayulu* v. *Annamalai*[5], it is held that a plaintiff cannot obtain specific restitution of a chattel unless his claim falls within section 11 (*a*) and that where the defendant held it on behalf of the plaintiff with a duty to deliver it back, the article is held in a fiduciary character sufficient to satisfy section 11.

NEGOTIABLE INSTRUMENTS —In *The Bank of Commerce, Ltd*, *Khulna* v *Kunja Behari Kar*,[6] the Federal Court points out that non-negotiable promissory notes are known to the law and are recognised by the Negotiable Instruments Act *Rangaraju* v *Sait Devichand Bhootaji Firm*,[7] lays down that as section 27 of the Negotiable Instruments Act involves the consequence that so far as making, drawing, etc , of a promissory note, etc , are concerned, those acts must in order to bind the firm, be done by a partner in the name of the firm and it is not sufficient that they are done in any other manner expressing or implying an intention to bind the firm, the description of the executant in the preamble to the promissory note as a partner of a named firm is perfectly consistent with his executing the note as the party liable thereon and cannot be construed as disclosing the name of the firm as the party liable on the note

COMPANY LAW —In *Damodara Reddi* v *Indian National Agencies*,[8] it is pointed out that, if the names of members have been improperly added to the register of members, the remedy of the company is to apply to the Court under section 38 for rectification and not to alter the register itself *Lyallpur Bank, Ltd* v. *Ramji Das*,[9] lays down that a company which has obtained in its favour an order under section 186 (1) of the Companies Act and had applied for its execution and not obtained satisfaction is entitled to apply and claim under section 73 (1) of the Civil Procedure Code a share in the rateable distribution of the assets of the contributory concerned

CIVIL PROCEDURE CODE —In *Krishna Mudaliar* v *Sabapathy Mudaliar*,[10] it is recognised that the power given by section 24 to the High Court to transfer a suit to that Court and afterwards re-transfer it for trial to the Court in which it was originally filed can be exercised only after giving notice to the parties and giving them an opportunity to be heard. *Jagannath Sowcar* v *Sripathibabu Naidu*[11], lays down that the discretion of the Court under section 34 to order interest at such rate as it deems reasonable is entirely unfettered, with the exception that it cannot grant interest on costs at a higher rate than six per cent The decision of the Privy Council in *Lyallpur Bank, Ltd* v *Ramji Das*,[9] lays down the important point that the provisions of section 36 imply that section 73 can be deemed to apply to the exe-

1 (1945) 1 M L J 279
2 (1945) 1 M L J 278
3 (1945) 2 M L J 383
4 (1945) 1 M L J 206
5 (1945) - M L J 460
6 (1945) 1 M.L J 24 (F C)
7 (1945) 2 M L J 113
8 (1945) 2 M L J 432
9 (1945) 1 M L J 309 (P C.).
10 (1945) 1 M L J 14 (F B).
11 (1945) 1 M L J 478.

cution of an order made under section 186 of the Companies Act. In *Bagyalakshmi Ammal* v *Bappu Aiyar*,[1] it is pointed out that having regard to the decision in *Bapanna Garu* v *Jagga Rao Garu*,[2] the view that the words "parties to the suit" in section 47 do not necessarily mean between parties who are plaintiff and defendant respectively in the suit cannot be accepted, and it is therefore necessary that there should have been a conflict in the suit between the parties in order that the decision of the question arising between them in execution could come under section 47. *Ramanatha Aiyar* v. *Abdul Salam Sahib*[3] holds that a claim by a judgment-debtor, in execution, for compensation for waste committed by a usufructuary mortgagee-decree-holder is within the scope of section 47 A useful point in relation to section 48 emerges in *Nacharammal* v. *Veerappa Chettiar*,[4] which decides that the words "the decree sought to be executed" in the section refer to the decree of the appellate Court even though it confirms the decree of the original Court and the period of twelve years should be computed from the date of the appellate decree An important point was decided in *Venkanna* v *Kotayya*,[5] where it is held that though as a general rule a plea of fraud has to be raised at the earliest stage of the proceedings and all that has to be said should be said fully and at once, yet different considerations arise when applying the provisions of section 48 as the latter sets a time limit on execution and such limit should not be allowed to prevail where the conduct of the judgment-debtor is such as to have prevented the execution of the decree within twelve years In *Suryanarayana* v. *Nageswara Rao*,[6] it is held that there is no difference in principle between section 49, Civil Procedure Code, and section 132 of the Transfer of Property Act and that a transferee shall take the decree subject to the equities which the judgment-debtor might have enforced against the assignor whether the transferee had any knowledge of them or not. *Venkataraghava Rao* v *Hanumantha Rao*,[7] decides that when once the Court has sent the decree to the Collector for action under section 54 the matter passes entirely out of its hands and when the Collector acts under the section he is performing a statutory duty and is not under the control of the Court, but that does not mean that a person aggrieved by the partition effected by the Collector is without a remedy, for he can move the Board of Revenue to revise the Collector's order. *Venkayya* v. *Tatayya*,[8] deals with a point which often arises, and holds that it cannot be said that because an agriculturist has a shed in or near his field he cannot get exemption under section 60 (1) (*c*) for the house in which he ordinarily resides unless he has proved that he has tethered some cattle in the house or has kept some agricultural implements there *Imperial Bank of India* v *Balasubramania Pandia Tevar*,[9] points out that there can be said to be "receipt of assets" within the meaning of section 73 in a case where the custody Court and the executing Court are the same, only if the Court has as custody Court come to the conclusion that there is no objection to transfer the amount necessary to pay the decree-holder at whose instance the fund was attached and has passed an order as custody Court transferring the amount to the credit of the first attaching creditor's suit which it is engaged in executing. In *Meenakshi Amma* v *The Province of Madras*,[10] it is held that the particulars required by section 80 should be accurately given and that a wrong description therein of property would be not an insubstantial but fundamental error and in the absence of evidence that the error was *bona fide* and accidental will preclude the maintainability of the suit *Ramamurthi Iyer* v *Meenakshisundarammal*,[11] decides that section 115 is wide enough to empower a Court to dismiss a revision petition for default of appearance. It also lays down that section 151 does not confer on the Court the power to exercise a jurisdiction it has not otherwise got In *Ankamma*

1. (1945) 2 M L J 567
2. (1943) 1 M L J 271.
3. (1945) 1 M L J 67.
4. (1945) 2 M L J 197.
5. (1945) 2 M L J 564.
6. (1945) 1 M.L J. 438.
7. (1945) 2 M L J 62 (F B)
8. (1945) 1 M L J 211
9. (1945) 2 M L J. 49
10. (1945) 2 M L J 387.
11. (1945) 1 M L J 4.

v. *Punnayya*[1], it is ruled that section 144 will be applicable and restitution ordered provided a decree is varied or reversed, however the variance or reversal has been effected, and that in cases not falling strictly within the section restitution can be ordered under the Court's inherent powers The decision in *Chinna Basava Satyanarayana* v. *H R E Board*,[2] suggests that where a pleader who was authorised to appear for the appellant was not present in Court, the Court is bound to treat the appeal as one where the party was absent and dismiss it for default *Ramamurthi Iyer* v. *Meenakshisundarammal*[3] reiterates that Order 9, rule 9 is not applicable to revision petitions In *Subbiah* v *Kotamma*[4] it is held that the only remedy open to the plaintiff in a suit for possession with mense profits, where possession is decreed with past mesne profits leaving the question of future profits open, and no enquiry is ordered under Order 20, rule 12, is to file a separate suit for the future profits and not come by way of a separate application under the rule. In *Madan Theatres* v *Dinshaw & Co*[5], the Judicial Committee makes it clear that Order 21, rule 2 only applies in execution and as execution does not begin until after a final order for sale has been passed the rule has no application when the question is whether or no a final decree for sale should be passed. *Abdul Subhan Sahib* v *Ramanna*[6] points out that it is not open to a judgment-debtor or to any one standing in his shoes to plead an uncertified adjustment of a decree by way of defence to a suit by an auction-purchaser in execution of that decree for possession. *Perumal Chettiar* v *Kotayya*[7] holds that the transfer of a decree to another Court for execution comes into effect from the date when the order of transfer is made and the transferee-Court can thereafter entertain an application for execution though a copy of the decree has not been received by it In *Sabapathy Chettiar* v. *Lakshmanan Chettiar*[8], the view is expressed that no notice need be issued under Order 21 rule 16 on those persons against whom the decree was not going to be executed and who were not interested in the execution proceedings. In *Rangayya* v *Nagapothu.Rao*[9] it is pointed out that Order 21, rule 49 is inapplicable where there was no partnership in existence as such at the time of the suit or at the time of the application for execution In *Naganna Naidu* v. *Venkataraghavulu Naidu*[10] it is decided that the omission to affix the sale proclamation in the Collector's office as prescribed by Order 21, rule 54 read with rule 67 would indeed be a material irregularity within the meaning of the rule A Full Bench has, in *Narasimhachariar* v *Raghava Padayachi*,[11] held that Order 21, rule 58 only applies to a claim preferred or objection made to an order of attachment in the particular execution proceedings and hence an order passed thereon cannot be said to be conclusive for all purposes inside and outside the particular execution proceedings. The implications of order 21, rule 66 are considered by the Privy Council in *Marudanayagam Pillai* v *Manickavasakam Chettiar*[12] It is there explained that rule 66 imposes on the Court the duty of causing a proclamation of sale to be made which must *inter alia* specify the encumbrance to which the property is liable, that the Court should bring its mind to bear on the contents of the proclamation and not act blindly on information supplied and that apart from the duty cast on the Court the applicant for sale or some one on his behalf has to file a verified statement containing the matters required by sub-rule 2 to be specified in the proclamation which are either known to or could be ascertained by him *Kannathal Achi* v *Vaduganathan Chettiar*,[13] holds that for purposes of rule 71 of Order 21, the word "decree-holder" includes an assignee-decree-holder In *Hanumayya* v *Chinna Bapanayya*[14] it is pointed out that Order 21, rule 89 does not involve the personal attendance of the judgment-debtor when paying the deposit under the rule and that the judgment-debtor can act through an agent without giving him any power of attorney In *Naganna*

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1 (1945) 1 M.L J 386
2 (1945) 1 M L J 331
3 (1945) 1 M L J 4
4 (1945) 1 M L J 204
5 (1945) 2 M L J 367 (P C)
6 (1945) 1 M L J 245 (F B)
7 (1945) 2 M L J 555
8 (1945) 2 M L J 22
9 (1945) 2 M L J 531
10 (1945) 2 M L J 259 (P C).
11 (1945) 2 M L J 89 (F B).
12 (1945) 1 M L J 229 (P C)
13 (1945) 1 M L J 322
14 (1945) 1 M L J 66

Naidu v *Venkatarayulu Naidu*[1] the Judicial Committee points out that upon the language of the proviso in Order 21 rule 90 what is required is that the Court should be satisfied that the applicant to set aside the sale has suffered substantial injury by reason of material irregularity or fraud and if the Court is so satisfied from the facts proved then the applicant may be said to have discharged his burden This burden may be discharged not only by direct evidence connecting the irregularity or fraud with the subsequent injury but also by circumstantial evidence. Omission to state in the proclamation of sale the revenue on an estate or part of an estate paying revenue to government as required by Order 21, rule 66 (2) (*b*) would be ordinarily such material irregularity. *Marudanayagam Pillai* v *Manickavasakam Chettiar*[2] is another pronouncement of the Judicial Committee holding that where a sale takes place at a serious undervalue occasioned by failure on the part of the Court and the decree-holder to carry out their obligations under Order 21, rule 66 in regard to the fixing of the proper value of the properties to be sold after allowing for the correct amount due under a prior charge, the judgment-debtor sustains a substantial injury within the meaning of rule 90 and the sale has to be set aside however dilatory or unsatisfactory his conduct may have been if he has not otherwise debarred himself of the right to have it set aside *Ramakrishna Reddi* v. *Veera Reddi*[3] points out that the plaintiff's right at any time after the institution of the suit to abandon any part of his claim does not require permission of the Court, nor does it require an application for amendment of the plaint; he has only to intimate it to the Court. *Matapalli Raju* v *Venkata Raghavayya*[4] holds that the provisions of Order 21, rule 1 (3) are not over-ridden by section 60 of the Transfer of Property Act In *Madan Theatres* v *Dinshaw & Co*,[5] the Privy Council takes the view that though a decree-holder need not agree to any adjustment or accept payment otherwise than into Court, it is open to the debtor to allege and prove that an adjustment has taken place or payment in whole or in part has been made and received and that there is nothing to qualify the wide terms of Order 23, rule 3 nor any grounds for limiting its application *Chellammal* v *Muthulaskshmi Ammal*[6] emphasises that under Order 33 rule 2 read with rule 5 (*a*) it is the duty of the petitioner to make a full and accurate verified statement of his or her properties In *Gopalaswami Naick* v *The Province of Madras*[7] it is decided that Order 33, rule 10 does not mean that the first charge referred to therein shall be only on the subject-matter of the suit which the party ordered to pay costs has recovered and that the provision that there shall be a first charge on the subject-matter of the suit is a distinct provision. *Rajamayyer* v *Venkatasubba Iyer*[8] holds that Order 34 rule 5 (3) contemplates the normal case where a mortgagee who sues to enforce his mortgage is assumed to apply for a final decree on default of payment by the mortgagor but it is not correct to read the rule as implying that none else shall have the right to make an application for a final decree in case of the mortgagor's default In *Angammal* v *Muhammad Sulaiman Lebbai*[9] the important point is laid down that where a mortgagor under a usufructuary mortgage has not paid the amount within the time fixed for payment in the preliminary decree for redemption and has not asked for extension of time under Order 34, rule 7 (2) but later on deposits the amount and applies for the passing of a final decree with a direction to deliver the mortgaged property the application is not precluded as the mortgagor is not bound to take out an application within three years of the preliminary decree and is entitled to deposit the amount so long as the final decree was not passed In *Sanyasappa Rao* v *Pappi Naidu*[10] it is held that Order 34, rule 13 which lays the method of appropriation of realisations under a mortgage decree applies not merely to a case where a property is sold with the consent of the prior mortgagee but also to cases where there is no prior mortgagee to consider and provide for, as for instance, where there is more than one mortgagor and the moneys

1 (1945) 2 M L J 259 (P C)
2 (1945) 1 M L J 229 (P C)
3 (1945) 2 M L J 473
4 (1945) 1 M L J 212
5 (1945) 2 M.L J 367 (P C)
6 (1945) 1 M L J 53
7 (1945) 2 M L J 140
8 (1945) 2 M L J 122
9 (1945) 2 M L J 239
10. (1945) 1 M L J 430

realised are from properties comprised in the mortgage and belonging to one or few only among them *Jami Kurmanna*, In re[1], holds that the power of dispensation contained in Order 41, rule 1 does not extend to appeals presented to the High Court for which special provision had been made by the amendment of the rules. This view has not been accepted in *Rayalla Ramappa*, In re[2]

CRIMINAL PROCEDURE CODE —The decision of the Judicial Committee in *King-Emperor* v *Khwaja Nazir Ahmad*[3] establishes that the receipt and recording of a first information report is not a condition precedent to the setting in motion of a criminal investigation though in a majority of cases prosecutions are undertaken as a result of information received and recorded in that way, for there is no reason why the police, if in possession through their own knowledge or by means of credible though informal intelligence genuinely leading them to the belief that a cognisable offence has been committed, should not of their own motion investigate It also points out that it is the duty of a Criminal Court when a prosecution for a crime takes place before it to form its own views and not to reach its conclusion by reference to any previous decision which is not binding on it such as to the findings in a civil proceeding A salutary principle is laid down in *Seshu Iyer*, In re[4], where it is stated that the plea of *autrefois acquit* will be sustained where the appellate Court had directed a re-trial after certain persons had been either discharged or acquitted after trial, on the ground that the enactment under which the trial was held was *ultra vires*, and subsequently the Privy Council held that the enactment was valid The ruling in *Daniel Youth* v *The King*[5] points out that the question of joint or several trials is always left to the discretion of the presiding Judge and where no request for a separate trial had been made it would not be possible for the Privy Council to override the trial Judge's discretion *Public Prosecutor* v *Venkata Reddi*[6] states that the correct procedure in regard to the proof of a confessional statement is for the police officer to record the statement of the accused in the first person and when he gives evidence, to say, that the accused made a confession, that he took it down and then refer to the statement, for the purpose of refreshing his memory. In *Malak Khan* v *King-Emperor*[7], the Judicial Committee points out that it is no doubt very important that as a general rule all Crown witnesses should be called to testify at the hearing of a prosecution but important as it is, there is no obligation compelling counsel for the prosecution to call all witnesses who speak to facts which the Crown desires to prove In re *Chenchuramayya*[8] holds that if there are two alternative sentences a Court should take into consideration all the circumstances of the case and award the sentence which in its view is more fitting In *Muthu Nadar*, In re[9], it is definitely decided that a sentence of imprisonment till the rising of the Court constitutes imprisonment within the meaning of the Code In *Madiga Chinna Obigadu*, In re[10], it is pointed out that section 102 of the Code relates only to formal searches under search-warrants issued under section 96 or 98 but not to emergencies where the search is conducted not for any specified object *Venugopala Mudaliar* v *Neelakanta Mudaliar*[11] holds that for the purposes of section 145 the possession of the tenant will be the possession of the landlord and the latter can be granted a declaration though the tenant is not a party The decision in *Arunachala Goundan* v *Chinnadorai*[12] states that the dispossessed person can be treated as in possession on the date of the preliminary order under section 145 only if he had been dispossessed within two months of that date The ruling in *Swaminathan*, In re[13], holds that routine complaints of new cases of embezzlements to the investigating officer cannot be considered as statements made by a witness in the course of the investigation of a charge within the meaning of section 162 In *Malak Khan* v. *The King-Emperor*[7], the Privy Council points out that section 165 does not apply where the articles are produced by the accused himself and the section is meant

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1 (1945) 1 M L J 268
2 (1945) 2 M L J 563
3 (1945) 1 M L J 86 (P C)
4 (1945) 1 M L J 275
5 (1945) 2 M L J 578 (P C)
6. (1945) 1 M.L J 222
7. (1945) 2 M.L J. 486 (P.C.).
8 (1945) 2 M L J 547
9 (1945) 1 M L J 180
10 (1945) 2 M L J 249
11 (1945) 1 M L J 303
12 (1945) 1 M L J 210
13. (1945) 1 M L J 452.

to be used in cases where a search warrant would be made use of in the ordinary course but lack of time renders it impolitic to use it *Swaminathan*, In re[1], lays down that when once the Secretary to the Government under the orders of the Governor certifies that His Excellency has accorded sanction under section 197, that is a sufficient proof that the Governor has sanctioned the prosecution in the exercise of his individual judgment in the absence of any evidence to the contrary. *Kumariah Naicker* v. *Chinna Naicker*[2] recognises that the fact that a previous complaint was thrown out under section 203 is no bar to the entertainment of a second complaint In *Subbiah* v *Kesavulu*[3], it is laid down that section 253 does not require any reasons to be stated by the magistrate for the discharge and a mere order discharging the accused will be a final order. In *Subbai Goundan*, In re[4], it is pointed out that there is nothing in the Criminal Procedure Code or the Madras Children Act which places a case in which there are several accused and one of them is a "young person" outside the provisions of section 349 of the Code and hence the sub-magistrate should not convict any of the accused but should send them all to the competent magistrate. *Duraiswami Goundan*, In re[5], explains that the object of questioning the accused under section 342 is to give him an opportunity of explaining the circumstances that appear against him in the evidence and hence the Court should give not a summary of the whole evidence but should so summarise as to thereby draw the attention of the accused to the salient features of the prosecution case that seem to call for some explanation *Doraiswami Naidu*, In re[6], holds that an accused coming before a magistrate under section 380 can be treated only as a convicted person and it will not be competent to the magistrate to set aside the conviction already recorded by the referring magistrate. In *Lala Jairamdas* v *The King-Emperor*[7], the Judicial Committee points out that chapter 39 of the Code together with section 426 forms a complete and exhaustive statement of the powers of the High Court to grant bail and excludes the existence of any additional inherent power relating to the subject of bail. *Kandimalla Thirupelu*, In re[8], holds that under section 436 a Sessions Judge may direct further inquiry into the case of a person who has been discharged and under section 437 can order his commitment instead of directing a fresh inquiry but there is no provision in the Code enabling the Sessions Judge to take cognisance of the offence himself or to direct a magistrate to do so The ruling in *Marudai Pillai*, In re[9], lays down that a complaint outside section 476 cannot be filed by a civil, revenue or criminal Court under its inherent jurisdiction. In *Munuswami Pillai* v *Doraikannu Ammal*[10], it is decided that if subsequent to the passing of an order for maintenance in favour of a wife the parties live as husband and wife, the order must be regarded as having become ineffective The *Crown Prosecutor* v. *N S. Krishnan*[11] holds that although section 497 (5) can have no application to the case of an accused person who has been released on bail under section 498 the Court can under section 561-A discontinue an order granting bail which enured for a limited period only. *Public Prosecutor* v *Panesawara Rao*[12] points out that the offence punishable under section 409 of the Penal Code being one punishable with transportation for life, the accused on a conviction under that section cannot be dealt with under section 562 of the Criminal Procedure Code.

REGISTRATION —In *Chaturbhuj Singh* v *Govind Prasad Singh*[13], the Privy Council holds that a document takes effect according to its terms from the date thereof in the absence of anything in the document itself indicating the performance of any act as a condition precedent to the document taking effect *Duraiswami Reddi* v. *Angappa Reddi*[14] recognises that under section 47 of the Registration Act if there is a competition between registered documents relating to the same property the document executed first in order of time has priority over the other though the former document may not have been registered until after the latter. In *Nalla Goundan* v *Krishna-*

1 (1945) 1 M L J 452
2. (1945) 2 M L J 577
3. (1945) 1 M L J 287
4. (1945) 1 M L J 241
5. (1945) 2 M L J 455
6. (1945) 1 M L J 178
7. (1945) 2 M.L J. 40 (P C.).
8 (1945) 2 M L J 88
9. (1945) 2 M LJ 125.
10 (1945) 2 M.L J 408.
11 (1945) 1 M L.J 187.
12 (1945) 2 M L.J 575
13. (1945) 2 M.L .J. 519 (P C).
14. (1945) 1 M.L.J. 425.

swami Naicker[1], it is pointed out that section 74 (*b*) has reference only to the requirements of the Registration Act or of any statutory provision which the Legislature has said shall be regarded as being supplemental to the Registration Act, and hence non-compliance with the requirements of the Estates Land Act is not a valid ground for refusing registration

COURT FEES.—In *Venkatasubba Rao* v. *Bhujangayya*[2], it is laid down that a fiscal enactment like the Court Fees Act should be strictly construed and where there is any doubt the benefit of it should be given to the tax-payer *Sokkammal* v *Arunachalam Pillai*[3] rules that where a suit is for accounts the amount expected to be received need not be specified and it is sufficient to pay court-fee on the relief of accounting and to pay court-fees later on the amount found due , but where the suit is to surcharge and falsify and to recover specific sums, the stamp on the plaint should be on an *ad valorem* basis In *Ramanujam Pillai* v *Ramaswami Pillai*[4], it is decided that unless the plaintiff is a party to a particular document and cannot get the relief he seeks without avoiding the document it is not necessary for him to seek the cancellation of the document and any relief he may otherwise ask for on the basis that the document was not intended to be operative cannot be treated in substance and effect as a relief for cancellation within the meaning of section 7 (*iv*) A *Mutyalamma* v *Krishnamma*[5] decides that under section 13 the Court has no discretion and is bound to refund the court-fees when a remand is made on any of the grounds mentioned in Order 41 rule 23 of the Civil Procedure Code *Balagurumurthi Chettiar* v. *Muhammad Ismail*[6] holds that an order issued by a Court for the sale of property in its custody during the pendency of a suit is a "process" within the meaning of section 20

LIMITATION —In *Satyanarayana* v *Rama Rao*[7], it is held that the principle that symbolical delivery momentarily interrupts the possession of the judgment-debtor and thereby extends the period of limitation is equally applicable to persons deriving title from the judgment-debtor *Subba Reddi* v *Venkataramayya*[8] recognises incidentally that section 4 of the Limitation Act is quite independent of sections 19 and 20 In *Subba Rao* v *Pattabhiramayya*[9], it is held that in the case of a joint Hindu family, a suit to set aside an alienation, filed by the younger of two brothers within three years of his attaining majority would be barred by limitation if the elder brother who was the manager and an adult had failed to sue within three years of his attaining majority In *Ramachandra Jivaji* v *Laxman Shrinivasa*[10], the Privy Council points out that section 10 of the Limitation Act can have no application to a case where property is in the possession of a donee under a voidable transaction. *Hussain Ali* v *Baquir Ali*[11] holds that section 10 cannot apply to a suit by a co-heir to recover his share of the sale proceeds of the estate of a deceased Muslim, from the person to whom they had been handed over by the person who arranged the sale with instructions to distribute the money among the heirs in accordance with their respective interests,as the receipt of the sale proceeds for purposes of distribution among the heirs did not constitute an express trust In *Akkandi Chetty* v *Rethinagiri Chetty*[12], it is pointed out that where a mortgagor from whom a purchaser derived his liability to be sued was absent from British India, section 13 would apply and save the suit from being barred against the purchaser also. *Krishnaswami Iyer* v. *Ramakrishna Iyer*[13] lays down that a payment by cheque by the debtor to the creditor is a payment which satisfies the requirements of section 20 In *Venkatappayya* v *Venkatapayya*[14], it is pointed out that the amendment of section 20 by Act XVI of 1942 long after the institution of a suit cannot revive what was barred and unenforceable at that time *Palanichami Nadar* v *Governor-General in Council*[15] holds that for a suit against a railway company for non-delivery of goods consigned for transit, time under Article 31 begins to run from after the definite refusal or decla-

1 (1945) 2 M L J 133
2 (1945) 2 M L J 536
3 (1945) 2 M L J 460
4 (1945) 2 M L J. 582
5. (1945) 1 M L J 205
6 (1945) 1 M L J 320.
7 (1945) 2 M.L J 205
8. (1945) 1 M.L J 38.
9 (1945) 1 M L J 200
10 (1945) 1 M.L.J 253 (P.C)
11 (1945) 2 M L J 422
12 (1945) 1 M L J 275
13 (1945) 2 M L J 202
14. (1945) 2 M L J 405
15. (1945) 2 M.L J 449

ration of inability to deliver by the responsible railway company *Perumal Reddiar* v *Suppiah Thevar*[1] recognises that Article 61 will govern a suit for reimbursement of money paid whether the claim was laid under section 69 or section 70 of the Contract Act *Hussain Ali* v *Baquir Ali*[2] holds that, under Article 62, the starting point is the date when the defendant received the money and not the date of the plaintiff's knowledge of it *R N Kapur* v *Travancore National and Quilon Bank, Ltd*[3], decides that where a customer is permitted to overdraw a current account and such account is sometimes in credit and sometimes in debit, the account is a "mutual, open and current account" to which Article 85 applies In *Ramchandra Jivaji* v *Laxman Shrinivas*[4], it is pointed out that where a transaction is sought to be avoided on the ground of undue influence Article 91 applies and time would run from the date of the knowledge, that is, the date of the document and not from that of the removal of the undue influence In *Venkataswami Chettiar* v *Ramalingam*[5], it is decided that where a mortgage bond provided that the mortgage money shall be payable "when required by you" or "whenever demanded" the amount becomes payable at once and limitation starts from the date of the bond *Periyannan* v *Ramaswami*[6] holds that where the application to set aside a sale is not filed within thirty days of the sale Article 166 will bar the petition though the latter is filed under section 47 of the Civil Procedure Code *Ambujammal* v *Singara Ammal*[7] holds that where Article 181, a specific article, is applicable, Article 182 cannot be invoked In *Thandavaraya Gramani* v *Arumugha Mudali*[8], it is held that even though an appeal is incompetent not in the sense that it was filed in the wrong forum but on the ground that no appeal lay, the order dismissing the appeal would give a fresh starting point under Article 182 (2) *Paras Reddi* v *Satyanarayanamurti*[9] holds that under Article 182 (4) also the starting point will be the date of the order on the application for amendment passed on appeal or on review, even as against persons who were not parties thereto In *Gopalaswami Mudaliar* v *Executive Officer, Tiruvarur Devasthanam*[10], it is pointed out that where there is no defect in the execution petition and the same is returned for compliance with certain particulars and the petition is re-presented without undue delay the order of the executing Court refusing to excuse the delay and dismissing the petition will be a final order within the meaning of Article 182 (5). *Annamalai Chettiar* v *Valliammai Achi*[11], is a pronouncement of the Privy Council on Article 182 which points out that to bring a case within clause 5 it must be shown that there was an application made in accordance with law to the proper Court either for execution or to take some step-in-aid and if there was such an application time begins to run from the date of the final order thereon The Privy Council further indicates that an application by way of an appeal to a Court of appeal to set aside an order of the subordinate Court raising an attachment ordered earlier is an application to take a step-in-aid The decision leaves open the point whether there could not be a step-in-aid if there was no application for execution then pending or whether a step-in-aid must be one in furtherance of execution and not merely one seeking to remove an obstruction to possible future execution. That to be a step-in-aid an application need not be in a pending execution application is the view taken by a Full Bench in *Ayi Goundan* v *Solai Goundan*[12] In *Seshagiri Row* v *Subbarami Reddi*[13], another Full Bench has laid down that for purposes of Article 182 (5) the fact that the application was not registered and numbered is immaterial and that the test is whether it was in accordance with law on the date of presentation, whether it was judicially considered, and whether a final order was passed thereon See also *Venkataratnam* v *Rama Kotayya*[14] In *Satyanarayana* v *Kajireddi*[15], it is pointed out that an execution petition filed with wrong number of the suit is not one in accordance with law It is also held that a prayer in an execution petition for the issue of a notice under Order 21, rule 21 is a step-in-aid.

1 (1945) 1 M L J 341
2 (1945) 2 M L J 422
3. (1945) 2 M L J 120
4. (1945) 1 M L J 253 (P.C)
5 (1945) 1 M L J 233 (F B)
6 (1945) 1 M L J 267
7 (1945) 2 M L J 444
8. (1945) 1 M.L J. 421
9 (1945) 1 M L J 39
10 (1945) 1 M L J 428
11 (1945) 2 M L J 224 (P C).
12 (1945) 1 M L J 47 (F B)
13 (1945) 1 M L J 270 (F.B)
14 (1945) 2 M L.J 152
15. (1945) 2 M.L J 427.

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MADRAS LAW JOURNAL.

I] FEBRUARY. [1946

SUMMARY OF ENGLISH CASES.

FISHER *v* RUISLIP-NORTHWOOD URBAN DISTRICT COUNCIL, (1945) 1 K.B 584 (C.A) : (1945) 2 All E R 458

Tort—Local authority erecting air raid shelter on highway under statutory powers—Obstruction—Duty to prevent danger to the public using the highway—Limits.

The plaintiff's car came into collision in the dark with a surface air raid shelter standing in the roadway as the lights were not in operation. In an action for damages against the local authority for personal injuries suffered and loss of earnings,

Held, the local authority owed a duty towards the plaintiff, as a member of the public lawfully using the highway to take reasonable steps to warn him of the danger of the obstruction Where the Legislature authorises the construction and maintenance of a work which will be safe or dangerous to the public according as reasonable care is or is not taken in its construction or maintenance as the case may be, the fact that the duty to take such care is expressly imposed by the statute cannot be relied on as showing that no duty exists. The duty of the local authority, is not a duty to light (unless that be in the circumstances the only possible effective precaution) but a duty to take reasonable steps to prevent the obstruction becoming a danger to the public both at night and during the day Authorities discussed and (1940) 2 K B 561, (1941) 1 K B 134 and (1941) 2 K B. 120, not followed.

The Common law duty owed to other users to take reasonable care in the use of the highway attaches, unless that duty is expressly or impliedly negatived by some statute.

INLAND REVENUE COMMISSIONERS *v* THE NATIONAL ANTI-VIVISECTION SOCIETY, (1945) 2 All E R 529 (K B D)

Income-tax Act (1918)—*Sections* 37 *and* 40—*Anti-vivisection Society—If one established for charitable purposes only—Burden of proof—Exemption of income from income-tax—Test*

The National Anti-vivisection Society claimed exemption from income-tax in respect of income from its investments on the ground that it was "a body of persons established for charitable purposes only."

Held, it was for the society to prove affirmatively that it was a society "established for charitable purposes only." But as on the evidence it was found that the main object of the society was the total obliteration of vivisection, the attainment of that object far from being beneficial would be gravely injurious to the community. Accordingly the society's claim for exemption must be rejected.

R *v* JOYCE, (1945) 2 All.E.R. 673 (C C A.).

Crimes—High treason—Alien obtaining British passport by declaring himself a British subject by birth—Treason by joining the enemies beyond the realm—Jurisdiction of English Courts.

D.

J, was born in the United States of America in 1906, the son of a naturalised American citizen, and thereby became himself a natural born American citizen. When about three years of age *J* was brought to Ireland where he stayed until about 1921 when he came to England. He stayed in England until 1939, being then thirty three years of age He was brought up, educated and settled within the King's Dominions. On July 4, 1933, he made an application for a British passport describing himself as a British subject by birth, having been born in Galway, the passport being asked for the purpose of holiday touring in Belgium, France, Germany, Switzerland, Italy and Austria. He was granted the passport, as such British subject by birth for a period of five years On September 24, 1938, and again on August 24, 1939, *J* applied for a renewal of that passport for a further period of one year, again describing himself as a British subject by birth who had not lost that national status The applications were granted and the passport renewed to expire on July 1st, 1940 It was found that *J* was engaged by the German Radio Company of Berlin from September 18, 1939, as an announcer of news in English and he actually did enemy propaganda on the radio On a charge of high treason,

Held, that in the circumstances, *J* owed allegiance to the Crown as an alien resident and under the protection of the Crown at least upto August 24, 1939, and the English Court had jurisdiction to try him As the passport was capable of affording *J* protection it is immaterial whether he availed himself of such protection or not.

BRISTOW *v.* WILLIAM DICKINSON & CO , LTD (1945) 2 All E R 678 (K.B.).

Income-tax—Bad debts recovered after being written off—Assessment.

Where the debts of an assessee were in the first place brought into computation as good and subsequently written off as bad, but in subsequent years the company recovered amounts towards such debt, such amounts must be included as trading receipts in the computation of profits in the year in which the money is received.

Absalom v *Talbot*, (1944) 1 All E R 642, relied.

MEHTA *v.* MEHTA, (1945) 2 All E R 690 (P D A).

Husband and wife—English woman marrying in India an Indian according to Arya Samaj rites after becoming a convert to Hinduism—If ceremony a " marriage " in the Christian sense in respect of which English Court can grant relief—Possibility of party changing faith which will permit of polygamy—Effect.

An English woman who came to India became converted to the Hindu faith and was purported to be married according to the rites of a Hindu sect known as the Arya Samaj to an England returned Indian sought the jurisdiction of the Court in England to have her marriage declared null and void on the ground that she was under the belief that she was being only converted and not going through any marriage by the ceremony. The opinion was given in evidence that as the husband could according to the law of his country alter his faith and having altered his faith then marry a second wife and so convert his monogamous marriage under the Arya Samaj creed into a polygamous marriage.

Held, the marriage being monogamous according to the Arya Samaj creed the Court can adjudicate upon the marriage, enforce rights under it and grant relief. The possibility of the husband's altering his faith and converting it into a polygamous marriage cannot affect the position.

On the evidence it was found that the wife never had any intention of marrying the respondent by the ceremony which was merely a fraud perpetrated on her by the respondent and a decree *nisi* of nullity was granted.

MORRIS v. MAYOR, ALDERMAN AND BURGESSES OF THE BOROUGH OF LUTON, (1946) 1 All. E R 1 (C.A).

Tort—Local authority erecting air raid shelter on highway—Duty to prevent its being dangerous to public—Injury to cyclist by collision with shelter during blackout—Contributory negligence—Principle how far applicable.

In an action by a cyclist for damages for personal injuries, resulting from a collision with an unlighted air raid shelter it was found that the local authority had painted vertical lines in white paint on each corner of the shelter and horizontal lines around the shelter The question of lighting was under consideration, owing to the difficulty of finding lamps which would burn for a long time without attention. The local authority put forward the plea of contributory negligence on the part of the plaintiff in not pulling up within the limits of his vision and avoiding the accident

Held, there is no such general proposition that a person riding in the dark must be able to pull up within the limits of his vision.

(*Baker* v. *Longhurst & Sons*, (1933) 2 K B. 461 explained and distinguished).

In dealing with traffic cases there is sometimes a temptation for judges to decide questions of fact in language which appears to lay down some rule which users of the road must observe But these are questions of fact dependent on the circumstances of each case

The local authority could have done something effective to light the shelter and not having done that were liable for the damages.

Fisher v. *Ruislip-Northwood Urban District Council*, (1945) 1 K. B. 584 : (1945) 2 All E R. 458, followed.

SCHERING LTD. v. STOCKHOLMS ENSKILDA BANK, (1946) 1 All.E.R. 36 (H L).

Contract—English Company guaranteeing debt due by German company to a Bank in Sweden, a neutral country—Outbreak of war—Effect on liability—Public policy—Principle of—Trading with the Enemy Act (1939)—*Scope.*

In 1936 a Swedish Bank was possessed of some German Reichmarks, the value of which at the current rate of exchange was £84,000, which a German company desired to acquire The German company had two subsidiary companies one in England and one in India. The German company acquired the Reichmarks and found it convenient owing to restrictions in Germany, to provide for the sterling payments to be made to the Swedish bank through its two subsidiaries with whom it could settle its indebtedness by means of the manufactured goods which it shipped to them The two subsidiary companies became sureties and pledged their goods for the claim of the Swedish bank against the German company which liability they undertook to purchase from the Swedish bank by instalments spread over a number of years and to reduce *pro tanto* their liability as guarantors When the war broke out in 1939 the fifth instalment became due and the guarantors took the view that payment would contravene the provisions of the Trading with the Enemy Act (1939) An action by the Bank was dismissed and that was confirmed on appeal. The guarantors then raised an action to have it declared that the contract was no longer enforceable against them and for the release to them of the amount of the debt.

Held, (Lord Russell of Killowen and Lord Macmillan dissenting) the effect of war upon a debt arising out of a contract made before the war is to suspend the right of action and not to abrogate or discharge the debt. The cause of action, the debt, is unaffected, the right of action is postponed until after the war. If this is true of a debt due to an enemy, it must *a fortiori* be so of one due to a neutral, though in matters relating to trading with the enemy there is no room for more tender treatment of the one than the other. There is this difference that by reason of the Trading with the Enemy Act 1939, had the debt been due to an enemy it

would have had to be paid to the custodian of enemy property, while in the case of a neutral the money will remain with the debtor to be paid by him to the neutral at the end of the war

The contract was executed and not executory and the outbreak of the war did not abrogate or discharged it.

Per *Lord Macmillan* —As benefit would accrue to the enemy during the war as a consequence of the further performance of the contract, the contract becomes illegal on grounds of public policy on the outbreak of war and is abrogated The contract cannot be regarded as having ceased to be executory before the outbreak of the war.

Decision of the Court of Appeal (1943) 2 All E.R. 486, affirmed.

R *v* SELLARS, (1946) 1 All.E R. 82 (C C.A)

Consumer Rationing (Consolidation) Order (1944) *Article* 4—*Acquisition of article in contravention of Order—Burden of proving that such acquisition is not prohibited by the Order is on the accused*

Article 4 of the Consumer Rationing (Consolidation) Order (1944) provided:—"A person, shall not acquire rationed goods from any person without surrendering the appropriate number of coupons in respect thereof; provided that it shall be a defence to a person charged with contravening this provision to prove that the supply to him of those goods without the surrender of coupons was not prohibited under the provisions of the Order"

A person who does acquire rationed goods, if charged with an offence against this Order, must, to be found not guilty, prove that the supply was not prohibited by this order The burden of proof is shifted intentionally by the Order on to the person accused, and it will be discharged by proving a set of facts which on examination is found not to be prohibited by any of the provisions of the Order.

R. *v* THOMAS PUTLAND AND GLADYS ANNIE SORREL, (1946) 1 All E.R. 85 (C.C A).

Consumer Rationing (Consolidation) Order, 1944—*Offence of acquiring rationed goods without coupons—Burden of proof*

In a charge of conspiracy to acquire and actual acquisition of rationed goods without surrendering the appropriate number of coupons in contravention of the Consumer Rationing (Consolidation) Order, 1944, on the question of burden of proof,

Held, the prosecution is not bound to prove by evidence that in fact there was no surrender of coupons, because in many cases that would be impossible. But the prosecution in making a charge against persons of having contravened the order, must give some *prima facie* evidence to the jury upon which the jury would be entitled as reasonable people to find as a fact that there was no surrender of coupons. When the prosecution have done that, there is not a change in the onus of proof, but there is a case against the defendants upon which the jury may convict them, unless they can upset the *prima facie* case which has been made against them. There is no necessity for a defendant in the first instance to give evidence that he has surrendered coupons—unless and until there is some case made against him, some *prima facie* case, so that an answer is called for Then it is for him; he can either sit down under it, or he can give evidence, make statements, do what he likes in the matter by way of satisfying the tribunal of fact that the transaction was in truth a proper one because there was a surrender of coupons.

1944 K.B. 68 : (1943) 2 All.E.R. 800, distinguished.

THE

MADRAS LAW JOURNAL.

I] MARCH. [1946

LAW OF CARRIERS BY LAND, WATER AND AIR*

BY

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FORMATION, PERFORMANCE AND DISCHARGE

Formation of Contract.—The general law of formation, performance and discharge of contracts govern the Law of Contracts with common carriers except with slight modifications regarding formalities caused by custom or statute. The contract is entered into between the owner of the " common carriers " on the one hand, and the owner of the goods, or passenger on the other In the case of a passenger to be carried, purchase of a ticket completes the contract. In the case of goods to be conveyed by carriers by land such as a Railway company the contract is effected by delivery of goods and the execution of a consignment note in three sets, one to be kept by the consignor, another by the carrier and the third to be sent along with the goods, containing particulars such as weight, description, freight, the person liable to pay the freight, and the name of the consignee, etc. Almost the same formality is required by the Indian Carriage by Air Act, XX of 1934. Rules 3, 4, 8 in chapter II of the First schedule prescribe a form of passenger ticket, luggage ticket and consignment note containing certain particulars about the description of the Goods and the rights and liabilities of the consignor and consignee If the Carrier accepts without a ticket or a consignment note, or with a ticket which does not contain some important particulars mentioned in those rules, the Carrier is not entitled to claim exclusion of or limitation to his liability under rules 17 to 31 of the Carriage by Air Act, XX of 1934. In the case of Carriers by Sea, for *e g.*, a ship, when goods are conveyed in a general ship which undertakes to carry the goods of any, a contract under Bills of Lading contains terms of the contract such as description, quantity, etc , of the goods When a merchant employs a whole ship to carry his goods, etc , it is called a contract under a Charter party. Charter parties are of three kinds, (*a*) contract for use of the ship on a voyage or series of voyages, goods to be shipped by the charterer or in his name ; (*b*) Contracts for use of ship on a voyage or series of voyages with liberty to the charterer to use the ship for taking goods of other shippers and requiring the Master to give Bills of Lading for goods so supplied ; (*c*) Contract for use of ship for a period of time during which the charterer has the right to direct how the ship is to be used

Carriers by land and air, will be at the time of the contract at the railway station or at the aerodrome In the case of carriers by water for *e g* , a ship, it may not be at the port of loading at the time of the contract and the ship will have to proceed to the port of loading, to load and to perform the voyage to fulfil the contract.

* Lectures II, III and IV of the lectures delivered under the auspices of the Madras Bar Council—Lecture 1 was published in (1945) II M L J p 39 (Journal)

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Voyage to the Port of Loading.—The ship chartered should proceed to the port of loading within the time fixed and if no time is fixed, with reasonable diligence. If port of loading is not named in the Charter party, the charterer should name it without unreasonable delay. Circumstances may intervene which would dissolve the contract before the ship reaches the port of loading If there is much unreasonable delay which goes to the root of the matter and which could not be compensated by damages, or if circumstances arise without default of parties which prevent the carrying out of the contract such as blockade of port of discharge or if the performance of the contract becomes illegal before the ship starts for the port of loading by declaration of war with the country of loading, the contract is dissolved before going to the port of loading

Loading.—Charterer is to provide cargo according to Charter-party without improper delay. It is enough if the cargo is ready at the usual starting place, though it is at a distance. Notice has to be given to the charterer immediately the ship is ready at the port of loading as otherwise he will not be liable for delay in commencing loading. If there are several loading places, it is the charterer's option to require loading at anyone without undue delay. If the loading place is not expressly agreed upon, the usages of the place decide it The shipper is to bring the goods at his expense near to the place where the ship is lying The expense of setting goods on board is to be borne by the shipowner

Charterer is entitled and bound to load only the holds or part of ship used for containing goods, but not to stow on decks and cabins If he loads on decks and cabins, he is liable to pay freight at the current rate. When charter-party authorises loading of several articles, it is left to charterer's option to fill with any one. If charter-party is to load a full cargo, it cannot leave broken stowage. Preparing the goods for loading such as pressing cotton, etc, is the duty of the charterer and costs are to be met by him. Loading, once completed, discharges the charterer from his obligations A ship should wait at the port of loading for the agreed days unless the charterer refuses to provide cargo, but to make breach complete, the ship should stay a reasonable time after loading days, after which period the ship-owner keeps the ship at the port at his risk After the charterer has failed to load, the shipowner should reasonably try to mitigate the loss and damage by getting the cargo from others. When a full cargo is loaded, charterer is not entitled to wait till expiry of full period of lay days. It is ship-owner's duty to stow the goods properly and provide proper dunnage. He is liable in damages if ship does not take full cargo owing to unskilful stowage by his servants, but shipowner is excused if stowage is directed by shipper. Cargo is not to be loaded on deck as they are exposed to greater risks, unless shipper consents or a custom to that effect exists Under the Merchant Shipping Act, 1894 (ss 446 to 450 and ss 492 to 502), notice of certain explosives has to be given to Master before shipping. The Carriage of Goods by Sea Act of 1924, gives power to the carrier to destroy goods of inflammable, explosive, or dangerous character which he has not consented to carry. S. 8 (9) of Explosives Substances Act gives the right to search and break open any box or package without any liability.

In the case of Carriers by land, the same law obtains The owner of the goods is bound to load them at the time and place and in the manner prescribed. He is not to tender or deliver for carriage dangerous or offensive goods without previous notice to the Railway authorities and without distinctly making clear their nature on the outside of the packet containing them. If any Railway servant has reason to believe any such goods to be contained in any packet and with respect to the contents of it no notice has been given, he may cause the packet to be opened for ascertaining its contents. But this restriction in respect of the carriage of dangerous goods will not bind the goods tendered by order of the Government or any goods carried by an officer, Soldier, Sailor or Airman or Police Officer, or a member of the Indian Territorial Force or of the Auxiliary Force in India—*Vide* Section 59 of the Indian Railways Act IX of 1890.

In the case of Carriers by air, the carriage by air craft of explosives and of arms and munitions of war is forbidden by international agreement Each State, may, in aerial navigation, prohibit or regulate the carriage or use of photographic apparatus As a measure of public safety, the carriage of objects other than those mentioned above may be subjected to restrictions by any regulations by the State provided such regulations shall be at once notified to the International Commission for air navigation, which shall communicate this information to other foreign countries—*Vide* articles 26 to 28 of the Paris Convention of 1919. After the air craft is loaded with the goods, a load-sheet is prepared and checked.

Transit.—The Law of Transit is the same for all kinds of carriers. Ship-owner's duty is to make the ship seaworthy, properly man, equip and supply the ship, make its holds in which goods are carried fit and safe for their reception, carriage and preservation. He is to make it ready for sailing by paying port charges, without needless delay or deviation Deviation makes the shipowner liable for delay and he is not protected by the exceptions of perils in the contract—*Vide* Rule 4 to article IV to the schedule of the Indian Carriage of Goods by Sea Act, (XXVI of 1925). But deviation is justifiable if it is to save adventure, to avoid danger threatening ship or cargo or both, and to save the lives of those in distress in other vessels Deviation is not justified to save property in other vessels, nor is deviation justified though it is in the first instance to save life yet subsequently it is to save property. In *Stag Line, Ltd* v *Foscolo Mango and Co* [1], Lord Atkin said that "The true test seems to be what departure from the contract voyage might a prudent person controlling the voyage at the time make and maintain, having in mind all the relevent circumstances existing at the time, including the terms of the contract and the interests of all parties concerned, but without obligation to consider the interests of anyone as conclusive"

Carriers by land are not to deviate (*Davis* v. *Garrat*, 6 Bing. 716). Carriers by air may alter their route in case of necessity—*Vide* article 8, para. 3 (4) of the International Air Traffic Association.

Shipowner or charterer is bound to protect each part of the cargo by all reasonable precautions by ventilation to prevent the goods from being further damaged and to check further destruction or deterioration

Master's right and duties—The Master is the shipowner's servant and has got custody of the goods or cargo for carrying out the shipowner's contract. The Master has the right to raise money by pledging the cargo or mortgaging the ship by what is known as a respondentia or a bottomry bond or even to sell the cargo in case of need He can incur expenses to preserve the cargo by unloading and drying it He can employ men to save it from wreck of the ship. Before incurring such expenses the owner of the cargo has to be communicated with. If the Master sells the goods for real necessity when it is not possible to take the owner's instructions, the title passes to the purchaser. If Master sells goods under circumstances which give him no authority to sell and the owner of the cargo does not ratify the sale, the property does not pass to the purchaser. The Master's authority to sell is determined by the law of the flag, *i e*, the law of the place to which the ship belongs. But if the Master sells in a country foreign to his flag under circumstances justifying the sale by the law of that country, the sale is valid. It is the Master's duty to repair and preserve the ship and carry it to the place of destination and earn the freight Master has the right to repair at the port of refuge, if ship is disabled. Lord Esher said "If the cost of the repairs necessary to enable her to complete the voyage contracted for would be more than the benefit which the owner (of the ship) would derive from it, then it would be impossible in a business sense to repair her". *Vide Assicurazioni Generali* v *ss. Bessie Morris Co* [2] If the ship cannot be repaired at all or could be repaired only after much loss of time, the Master as well as the shipowner should procure another ship and transport the cargo to destination The shipowner is not bound to employ another vessel

1 (1932) A C 328. 2. (1892) 1 Q B 571, (1892) 2 Q.B. 652

at his loss. Master is given a reasonable time to elect whether to abandon, or tranship and repair after communicating with the shipowner. If voyage is abandoned, Master may contract to forward the goods to their owner The new contract must be fair and advantageous to the owner of the goods If goods in an abandoned ship are perishable he can sell them if there is no time to communicate with the owner If a ship is abandoned and the Master does not send the goods in another ship, all claims to freight are abandoned unless it be an advance freight. If Master and crew abandon ship voluntarily and are not dispossessed by a hostile foe and the ship is saved by salvors and brought to port, cargo owners may claim their cargo without paying freight.

Discharge.—Regarding carriers by air, under article 13 of schedule I of the Carriage by Air Act, 1932, the carrier is to give notice to the consignee as soon as the goods arrive at the place of destination, and the consignee is entitled on their arrival at the place of destination to require the carrier to hand over to him the air consignment note. The carrier is bound to deliver the goods to him on payment of the charges due and on complying with the conditions of carriage in the consignment note If the carrier admits the loss of goods or if goods do not arrive at the expiration of seven days after due date for arrival of goods, the consignee is entitled to enforce his contract against the carrier. Article 19 renders a carrier liable for damage by delay in the carriage by air of passengers, luggage or goods Articles 18 and 20 mention the conditions on proof of which the carrier escapes liability for injury to passenger or goods or luggage. Article 22 sets out the extent of liability. Article 29 provides that receipt by the persons entitled to the delivery of luggage or goods is *prima facie* evidence that the same have been delivered in good condition. It further provides that, in the case of damage to luggage the person is bound to complain to the carrier within three days from the date of receipt, in the case of damage to goods within seven days, and in case of delay, within fourteen days from the date on which the luggage or goods have been placed at his disposal Article 28 speaks of the venue of the suit Article 29 prescribes two years from the date of arrival as the period of limitation for action for damages. In cases of combined carriage, partly by air, and partly by another mode of carriage, under article 31 (2) of schedule I of the Carriage by Air Act of 1932, the parties may insert in the document of air carriage conditions relating to other modes of carriage provided that the carriage by air falls within the terms of rule 1.

In the case of carriers by land, the transit ends by actual delivery of the goods to the person mentioned in the contract or his agent, by tender and refusal to accept, or refusal to pay charges, or by attempt to deliver and failure through no fault of the carrier, or by failure of the consignee to remove within a reasonable time. At the end of transit, the carrier is liable only for negligence. The carrier shall not deliver to the consignee if goods are supplied to the carrier by one without the consent of the owner and the real owner claims it, or if an unpaid vendor stops the goods The carrier by land, such as a Railway company, should deliver goods safe, in time and to the right person. Special agreement by what is known as "Owners" risk note frees a common carrier from liability to deliver safe The carrier is liable, for delay in the delivery of goods owing to his fault. If delay is due to default of some others beyond the carrier's control, or if delay is due to sudden and unexpected pressure of business, he is not liable. The carrier should deliver to the right person at the place addressed Though he is not bound to deliver at the house of the consignee yet if the consignee's address is known, the carrier should give him notice The owner can require delivery at an altered place before goods reach original destination, provided carrier is serving at the altered place The carrier is responsible for damages caused by loss, injury, misdelivery or delay If goods are lost the market value of the goods at the time and place of delivery, if there is a market at destination, *minus* the cost of carriage, is the quantum of damages to be awarded. If there is no market at destination, the market value of the place where delivery was given to the carrier *plus* the cost of carriage *plus* any profit which the consignee might have made by resale, if goods are intended to be sold, is the quantum of damages. But if goods are only injured, damages are measured

by the depreciation in value of the goods which was the natural result of the injury. In case of delay, such damages as have arisen naturally in the ordinary course of things are given. If owing to extraordinary circumstances heavy loss is likely to be caused to the owner, unless knowledge of those circumstances are brought to the notice of the carrier and unless he is given an opportunity to accept or reject those goods, the carrier is not liable for such heavy loss.

In the case of carriers by sea Port of discharge is usually mentioned in a Bill of Lading for voyage in a general ship In a chartered ship if charter-party leaves it uncertain, the charterer is to name the port of discharge in reasonable time. If he does not do so, the Master is to act on his judgment The Master is not bound to communicate with the charterer before doing so If the Master has reasonable opportunity, he is to notify the arrival of the ship at port of call A port is a place where vessels lie safely with shore to land goods, with facilities for trade having wharves and wharehouses It need not be physically safe but must politically. If shipowner accepts a port of discharge as safe at the time of signing Bill of Lading he cannot afterwards object but claim damages if unsafe If cargo is of varying goods, discharge is to be at the place suitable and convenient for consignees as a whole. If there are several places in the port for discharge of cargo the option to discharge at any particular place is with the shipowner in the case of a general ship, and with the charterer in the case of a chartered ship The mode of discharge is according to practice of the port, *e g*, whether in the open water or at a wharf or in dock If more than one of these methods are commonly adopted, the ship-owner may choose, provided the method he chooses should not involve extra charges on consignee, if by another suitable mode they could be avoided. Generally, charterer or consignee must take cargo from ship's side and shipowner is discharged on delivery at the ship's side and he is to provide enough men and appliances. The shipowner is to take goods out of the holds and deliver them on deck and to separate goods so as to give delivery to several consignees Master is not bound to notify ship's arrival when ship is a general ship or a chartered one It is the duty of the consignee to watch But the Master ought to enter ship's name at the Custom House and make such other public notifications

Liability of consignee on landing—If consignee did not appear to claim goods at the time fixed, or if no time is fixed, within a reasonable time having regard to the usages of the port the Master has the power to land and warehouse them and the consignee is liable for wharfage or other expenses. If goods are detained for want of proper description in the Bill of Lading the ship owner is not liable.

Personal delivery to consignee or his agent is necessary. But personal delivery may be excused by an established course of business at the port. It may be excused by special terms of contract Delivery is to be made to the right person entitled as the holder of the bill of lading Delivery to a consignee who is not holding the Bill of Lading does not discharge the shipowner If there are conflicting claims the proper course is to interplead Delivery must be of the right goods. When discharging cargo, if there is a shortage of delivery of particular goods and also a residue of unidentified goods, the shipowner cannot compel the consignees to take the unidentified goods as *pro rata* fulfilment of the contract to deliver.

Through Bills of Lading—In contract by shipowner to deliver to another carrier to forward to a further destination, shipowner's responsibility does not terminate when goods leave the ship. He has to contract with a carrier and deliver the goods to be forwarded Frequently through-Bills of Lading are issued partly by sea and partly by land

Warehousing—When the consignee fails to take delivery, the shipowner or other carrier by sea has to keep goods on board or at the wharf or warehouse at his own risk for a reasonable time. While so holding the shipowner is liable as a carrier. By arrangement, or following a usual course of business if the carrier at the end of transit puts the goods into a warehouse for the owner, he ceases to be responsible as a carrier but he becomes responsible as a warehouseman. Having

warehoused the goods, the shipowner gives notice to the consignee that he holds them only as a warehouseman and the consignee accepts notice. If the consignee refuses to take delivery or fails to appear within the agreed time, the carrier may terminate his responsibility as a carrier and by warehousing the goods becomes liable as a warehouseman If he still holds as a carrier he does so under the contract and is entitled to the benefit of exceptions in the Bill of Lading. But if he warehouses them and becomes liable as a warehouseman, it is doubtful whether the exceptions of negligence in the Bill of Lading apply.

Lien for freight—On landing the goods at the warehouse and placing them in the custody of the warehouseman the shipper or carrier is to give notice to the warehouseman in writing that goods kept are subject to the shipowner's or carrier's lien and other charges and to keep them till such lien is discharged. The lien is discharged upon production to the warehouseman of the receipt of payment of the amount due to the shipowner or carrier or upon deposit with the warehouseman the sum due to the shipper or carrier towards freight If that lien is not discharged, warehouseman has the right to sell the goods after keeping them for ninety days in a warehouse and if they are perishable then much earlier by publishing in the local newspapers and by giving notice to the consignee, if his address is known. *Vide* section 497 of the Merchant Shipping Act of 1894. Proceeds of the sale are to be applied to pay customs or excise duties, charges of wharfinger and shipowner or carrier. Whether a shipowner is liable for right delivery to consignee after so delivering them does not seem to be decided. The Merchant Shipping Act does not relieve the shipowner of that duty. If by warehousing them he has ceased to have all control over the goods, he ceases to be liable for correct delivery, but if he remains in control, liability continues. Shipowner is not liable for their safety in the warehouse though it is his duty to direct the warehouseman as to the person entitled to delivery.

Warehouseman's responsibility—Warehouseman taking custody of goods under the Merchant Shipping Act is under the obligation to deliver the goods to the same person as the shipowner is bound under contract to deliver.

STOPPAGE IN TRANSIT, GENERAL AVERAGE, SALVAGE AND WRECK, FREIGHT AND DEMURRAGE, LIENS AND PREFERENCE.

Stoppage in transit is exercised by unpaid vendors. He parts with possession of the goods and the Bill of Lading. The goods are in transit. The buyer becomes insolvent in the sense that he is unable to meet his engagement. An unpaid vendor before giving possession has lien for his price, but when he parts with possession his lien ceases to exist and only a right to stop in transit remains. Hence stoppage in transit is regarded as an extension of unpaid vendor's lien[1].

Effect of exercise of the right—By the mere exercise of this right, an unpaid vendor does not regain property, nor cancel sale. He recovers only possession till the price is paid[2]. He cannot demand actual possession during transit against the will of the carrier except at the contracted place of destination. This right of stoppage in transit is subject to the possessory lien of carrier, warehousesman, etc, but not subject to any general lien of the carrier in respect of the goods.

Transit—It involves two ideas (*a*) the goods are in transit from the time they leave vendor's hands till they are taken possession of by the buyer; (*b*) they are to go to some particular destination. Delivery of goods by the vendor to carrier for transit, though the carrier be named or employed by the buyer, does not end the transit This is true whether the goods are in a general ship or a

1. *Vide* section 43 of the English sale of Goods Act of 1893 and section 50 of the Indian Sale of Goods Act, III of 1930.

2 *Vide* section 48 of the English sale of Goods Act of 1893 and section 54 (1) of the Indian Sale of Goods Act of 1930

chartered ship. But if a ship is chartered by the buyer upon such terms as make over the complete control of her to him, the Master and the crew becoming his servants, transit is at the end A carrier may, before delivery of the goods, become the agent of the buyer by express agreement and then his possession is only that of the buyer. Or again by implication from the course of business between the buyer and the consignee, the carrier holds possession for the consignee, as when the carrier habitually stored the consignee's goods in carrier's warehouse on their arrival and holds them for the consginee subject to his orders. If the buyer or his agent obtains delivery of goods before their arrival at the appointed destination, the transit in at an end [1] Part delivery is insufficient to put an end to transit. In any case where the goods are in their nature separable, and the portion undelivered remains in the hands of the carrier as such, the right of stoppage in transit may be exercised as to the undelivered portion.[2] But if the whole of the cargo is one entire machine and possession of the part might amount to the possession of the whole, then delivery of part to the buyer may put an end to the transit. In the case of delivery by one carrier to another to forward or by a carrier to the warehouseman at the destination, the transit still continues, unless he takes as agent to the buyer.

In case of delivery to buyer's agent to forward to a destination there might arise two cases :—One, where further destination has been notified to the vendor by the vendee and the agent is definitely instructed to send, the transit continues, even after delivery to the agent, till destination is reached. Two, where no further destination has been definitely notified to the seller by the buyer, the transit ends. Buyer has no right to intercept goods before destination, if destination is fixed. But if no destination is agreed upon, then the buyer may at any time end the transit.

Stoppage in transit is exercised by vendors and sub-vendors. Each vendor loses his right while the buyer who has purchased from him transfers the goods and the Bills of Lading for them to the sub-vendor. The right of vendor to stop is defeated by the intervening right of other persons. If while the transfer continues, the buyer assigns the goods or transfers the Bill of Lading for them to one *bona fide* for value without notice that they have not been paid for, the vendor's right of stoppage is lost as against him. Under section 47 of the English Sale of Goods Act of 1893, to defeat the right of stoppage in transit, there must be a valid sale or dispostion of the goods by the buyer valid to transfer property and there must also be a transfer by the buyer of some document of title to the goods. Part-payment or giving acceptances by buyer does not prevent his right. If the vendor agrees to take something else than money—such as goods or bills—in absolute payment of the price, he will, on receiving them, cease to be an unpaid vendor and will lose his right.

Notice of stoppage in transit must be given by the vendor or his authorised agent to those in immediate custody of the goods, *i.e.*, usually to the Master in the case of a cargo. Notice given to the shipowner and transmitted by him to the master is sufficient but not unless and until it reaches the Master. Notice given to the principal must be given at such time and under such circumstances that the principal, by the exercise of reasonable diligence, may communicate in time to his agent in possession to prevent delivery to buyer.

By exercising this right, the vendor must take possession of the goods from the carrier by payment of freight, if any due, up to the ultimate destination. For breach of this obligation, the vendor will be liable in damages If Master of a ship delivers to buyer after valid notice to him of the vendor's exercise of the right of stoppage in transit, Master and shipowner are liable in damages to

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1. *Vide* section 47 of English Sale of Goods Act of 1893.

2. *Vide.* section 46 of English Sale of Goods Act of 1893 and section 52 of the Indian Sale of Goods Act III of 1890.

vendor Section 54 (2) of Indian Sale of goods Act III of 1930 confers a right to re-sell perishable goods without notice and non perishables after notice for the sale price. There does not seem to be any decided case as to the title of a *bona fide* assignee for value without knowledge of the notice of stoppage in transit given by a vendor The answer seems to be that the assignee gets title to the goods in preference to such a vendor.

Right of vendor, subject to pledge, mortgage or sub-purchase. Where the vendor, instead of assigning, pledges or mortgages, along with the Bill of Lading, the vendor's right of stoppage in transit continues subject to the charge On that being paid off—no matter by whom—the unpaid vendor's right to stop revives If the vendor has given notice to stop, he will be entitled to claim upon balance of sale proceeds. If the original vendor duly gives notice to stop the goods, but the sub-purchaser has not paid to his vendor, the original vendor is entitled to require that the purchase money due from the sub-purchaser should be paid over to himself so far as is necessary to satisfy his claim.

Carriers by air and stoppage in transit—In the case of carriers by air, article 12 of the Carriage by Air Act, 1932, schedule I gives the unpaid consignor the right of stoppage in transit. He has the right to dispose of the goods by withdrawing them either at the aerodrome of departure, or at destination or by stopping them in the course of any journey on any landing or by calling for them to be delivered at the place of destination or in the course of the journey to a person other than the consignee named in the air consignment note or by requiring them to be returned to the aerodrome of departure. Article 12 (2) says that if it is impossible to carry out such order of the consignor, the consignor must be forthwith informed. Article 12 (4) says that the above right of the consignor ceases when that of the consignee begins in accordance with article 13, *i.e*, on arrival of the goods at the place of destination Nevertheless, if the consignee declines to accept the consignment note or the goods or if he cannot be communicated with, the consignor resumes his right of disposition.

General Average—(*a*) Law of general average is peculiar to carriage by water. This law is derived from the ancient law of Rhodes which was adopted into the Digest of Justinian as Lex Rhodia How far this branch of law might one day become applicable and useful to carriers by air, as aerial navigation increases, affords a wide field for useful speculation Average is general and particular. In maritime adventure there are three interests (*a*) the ship with her stores, furniture and tackle ; (*b*) the cargo and (*c*) the freight When loss is sustained by one interest from a danger peculiar to it, it is borne by it alone, and it is particular average. But to avert danger to the whole adventure, if some particular interest is sacrificed, such as the throwing overboard of cargo or the cutting of mast etc, for safety in storms, it is general average Expenditure incurred to save a particular interest is particular average expenditure Extraordinary expenditure incurred to save ship and cargo is general average expenditure Every particular interest can be called upon to contribute to the general average expenditure incurred

General average sacrifice—No contribution is claimable if common danger arose from negligence or wrongful conduct of claimant, *e g*, unseaworthiness of ship, negligent navigation or dangerous condition of goods To claim contribution (*a*) the interest sacrificed must be common to the whole martitime adventure ; (*b*) goods must be thrown overboard, not forced out by waves or destroyed by lightning or tempest ; (*c*) the throwing should be to lighten the ship and there must be an extraordinary common danger. Jettison is a familiar instance of general average sacrifice Jettison of deck cargo in a general ship does not confer the right to contribution unless (*a*) there is usage or (*b*) other owners consent or (*c*) where the cargo both above and below deck belong to the same shipowner who chartered the ship and the charter-party stipulated for loading it

To avert a common danger, a ship and its stores may be sacrificed, or a ship's tackle and stores may be put to some dangerous use not intended to be so used

and thus getting destroyed, or damage may be caused to a ship in a fight with a privateer and loss may be caused towards the value of gun powder and shot and the cost of curing the wound of the crew, as resisting a privateer is part of the adventure. As to the question whether voluntary stranding of a vessel to save it from a storm or to avoid capture or foundering in deep water, etc, is a general average act, Abbot and Arnold answer in the affirmative Lowndes who once held a contrary view has now changed his old view and agrees with them In the case of *The Seapool*[1] while construing rule 5 of the York Antwerp Rules of 1924, voluntary stranding was held a general average loss In the United States, the same view is held Damage done to a ship or cargo sustained in extinguishing fire on board is a general average loss Where damage to cargo arises partly from an act of sacrifice and partly from an act of accidental peril and damage done by each is not distinguishable, no question of general average contribution arises

General average sacrifice and general average expenditure—Where voluntary sacrifice of money is made to save both the ship and cargo under extraordinary danger it is general average expenditure. To avoid common danger, master employs men or other vessels to render assistance or to put the ship in a Port of Refuge General average expenditure may be compared to salvage. Both are distributed over whole property in proportion to values, though there may be a difference as to when the liability is to be ascertained and though salvage is a reward and not an expenditure. Expenses incurred in raising and saving a stranded ship and cargo or dragging her off a bank while loaded are such expenses, subject to limitation that the burden thrown on cargo must not be greater than for saving it separately. Occasionally the question has arisen whether a shipowner can charge for his own services *Schuster* v *Fletcher*[2] held that he is not entitled but Lord Herschell in *Rose* v. *Bank of Australia*[3] dissented from it. Expenses of going into a Port of Refuge such as pilotage, towage and harbour dues are Port of Refuge expenses and it is a general average expenditure To justify a deviation to a Port of Refuge it must be to avoid an immediate danger. The danger may be either external or due to original or encountered defect of ship, or the danger may be owing to insufficient men and stores making voyage unsafe The expenses of coming out of the Port of Refuge was held to be a general average expenditure in *Atwood* v. *Sellar*[4] while it was held to be otherwise in *Svensden* v. *Wallace*[5] Regarding wages and maintenance of crew when ship is put in a Port of Refuge the older view[5] was that they form general average expenditure but the later view is that they do not[6] The latter is the accepted English view Nearly all other countries follow a different rule and York Antwerp Rules make wages and cost of maintenance subjects of general average contribution Regarding cost of discharge and re-loading cargo at a Port of Refuge, if discharge is for safety of ship and cargo, *e g*, if there is leakage of ship and the leakage cannot be got at without discharging cargo, it is entitled to be contributed But if discharge is for the benefit of cargo only, such as drying wetted grain to save it from rotting, then the cost is to be borne by the owner of the cargo, unless the wetting arose from a general average act. Cost of re-loading is not a general average expenditure. Regarding the cost of warehousing goods at Port of Refuge, there are conflicting views. Under York Antwerp Rule (1) (*c*) this is a general average expenditure. The loss or damage to cargo which is caused in a warehouse from fire and thieves seems to be a general average expenditure Damage suffered by cargo in the course of being discharged, re-loaded or stored is a subject of general average contribution under York Antwerp Rule XII

Contribution—"The whole law on the subject is founded on the principle that the loss to the individual whose goods are sacrificed for the benefit of the

1. (1934) L R Pro 53
2. (1878) 3 Q B D 418
3. (1894) A C 687, 703
4. (1880) 5 Q B D 286 at 290
5. (1884) 13 Q B D 69
6. *Power* v *Whitmore*, (1815) 4 M & S 141 105 E R 787

rest is to be compensated according to the loss sustained on the one hand and the benefit derived on the other "[1] The time for calculating the extent of sacrifice and the contribution is when the ship and cargo complete the voyage or when it is brought to an end. All interest at risk when sacrifice is made and continued safe down to the completion of the voyage must contribute proportionately to their values at destination. Owners of a cargo who sold it for their benefit at intermediate port after sacrifice should contribute in respect of the benefit realised. Owner of the property sacrificed has to contribute along with the rest If, during the voyage, there were several acts, each owner of sacrificed interest is to contribute to all the sacrifices Only property at stake and freight depending upon its safety that are to contribute. There is no contribution for lives saved Provisions for consumption of passengers, wearing apparel, jewels and other things belonging to passengers and crew taken on board for private use and not for traffic are exempt from contribution. Where goods are sold at Port of Refuge to pay general average expenses they are contributed for on arrival at destination. If value realised at Port of Refuge is higher than it would have been at Port of destination, owner of goods could claim contribution on the higher amount.

Contribution by freight—Where freight is payable on delivery of goods, a sacrifice of them preventing delivery involves a sacrifice of the freight on them That must therefore be contributed to. So too the freight on the goods which are ultimately saved should contribute. When at the time of sacrifice, the ship had more engagements and when freight is conditional on completion of subsequent voyages, as under a charter-party for a voyage out and home at a freight to be paid at home the whole freight is to contribute

Remedies—Shipowner has a lien upon goods for general average contribution, whether the claim is on his behalf or on behalf of the cargo owner. The lien prevails over earlier bottomry bond goods are not usually detained. as calculation of the amount of contribution takes time but are given to a receiver on his undertaking to pay the amount due or on a deposit of the same with a bank or on other security. Shipowner can sue cargo owner for contribution and if goods change hands on a consignee taking delivery undertaking to pay contribution, he could be sued. An owner of goods entitled to general average contribution may sue shipowner or other cargo owners. His claim is personal He cannot proceed for claim *in rem* nor has he a lien.

Salvage and wreck : Salvage.—Salvage and wreck are peculiar to law of carriage by water and by air. There is no parallel to it in the Law of carriage by land. Salvage is service rendered to the owner in the recovery of property subject to a lien for reward. This rule is based upon public policy to encourage strangers to save vessel from danger at sea or in a river The property saved must be a ship, her apparel, cargo or wreck. Salvor had no right of action at common law. He has possessory lien, if in possession He has maritime lien and if he is not in possession he can procure an arrest. In common law Courts, he had no right of action but in Admiralty Courts, he can take proceedings *in rem*. Salvage depends upon the saving of some property. It is not necessary that the safety was wrought about by actual services. It is enough if services have been rendered which have or may have rescued the ship or cargo. But if a salvor is employed, he is entitled to reward on his contract, no matter whether property is saved or not Merchant Shipping Act of 1894 enacts that salvage is payable for services rendered in saving a vessel, cargo, apparel of a vessel, etc, in distress near the coast of the United Kingdom. Sections 544 and 545 provide for rewarding services in saving life from ship by payment by owner of ship or cargo, etc., saved. Before the Merchant Shipping Act of 1894, there was no reward for saving life But where acts of life-salvage could be connected with property by the same salvors, the Court enhanced the amount of salvage given for services to the property. Ways of earning salvage are by personal services on board a salved ship by towing her,

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1 *Per* Bovill, C J. in *Fletcher* v. *Alexander*, (1868) L R 3 C P 375 at 382

by re-capturing her, by supplying her with men and stores for want of which she is in danger or by protecting the ship and cargo after she had become a wreck.

Conditions of salvage service—There should be impending danger or reasonable apprehension of it Service should be rendered by persons not under any public or private duty to render Service must help appreciably in assisting to save the vessel or cargo. Passengers are bound to protect the ship and cargo against common danger and are not entitled to salvage Crew and officers of ship or tug are not, but if after the termination of their service they render salvage work, they are entitled. Public officers whose duty it is to render assistance, *e g*, officers and crew of a ship of the Royal Navy are not entitled to reward. That the Crown cannot claim salvage even by agreement apart from the Merchant Shipping Salvage Act, 1916, was decided by the House of Lords in *Admiralty Commissioners* v. *Valverda (Owners)*[1]. Where salving and salved vessels belong to the same owner, the old law was that no claim for services was recognised. But the recent decision of the House of Lords in the *Kafiristan*[2] held him entitled to obtain salvage reward. The fact that the salved vessel is at the same time under charter to owner of salving vessel does not prevent him if the charter-party does not transfer. possession of the salved ship to him. The fact that the salved vessel is at the time chartered to the owner of the salving vessel does not entitle him from claiming salvage, if the charter does not transfer possession of the salved ship to him and *vice versa*

The amount of salvage is determined by the extent, nature and effect of his services and the merit and sacrifice of the person rendering them The basis of salved value on which salvage is awarded is the value of ship and cargo when brought to safety. If the salving ship sustains damage in the course of her service and lose her earnings then, if salved property is ample, while remunerating the salvage, enough should be awarded to the salvor to cover the actual loss which the salvor incurred. Want of care or skill or misconduct of salvor is also considered in fixing the amount of salvage. Section 519 of Merchant Shipping Act of 1894 enjoins the person finding wreck to give it to the Receiver of the District Agreements as to the amount of the salvage are set aside if unfair. Competency of the parties and knowledge of all the circumstances and the critical nature of the situation, etc , will be considered to ascertain whether the agreed amount is excessive or unfair · Salvage agreements by the Master bind the owner only when the contract is made under necessity and for Master's benefit[3] Contributions to salvage by different interests, such as the ship, the cargo and the freight, depend upon the benefit secured by each. Only those that are benefited are liable. If a sum is awarded as salvage reward, each interest is to contribute towards it in proportion to its value In awarding salvage, value of the cargo is estimated at the place of termination of salvage service, deducting usual expenses and charges on a sale of the goods. Wearing apparel and effects of passengers, of Master and of the crew do not contribute When salvage service becomes necessary owing to fault of the shipowner the shipowner is not entitled to contribution from other interests.

Wreck—By the common law, the king has the right to wreck Formerly, if a living thing escaped from a ship, the owner has a right to it within a year. Later on, the owner was given the right to claim the goods also within one year. Originally the right to claim them was granted to the Lords of Manors near the Coast who exercised it on behalf of the King. In the case of a derelict ship "wreck" includes goods thrown to lighten a vessel called jetsam, goods sunk but tied to some floating mark to show the place called lagan, and goods washed out of the ship and remain afloat called floatsam, etc. By Merchant Shipping Act, the superintendence of all wreck was placed under the Board of Trade who appointed receivers throughout the Kingdom[4].

1 (1938) A.C 173.
2 (1938) A C 136
3. *The Renpor*, (1883) 8 P D 115 at 118, Bret, M R
4 *Vide* Ss 510, 511, 518, 525 of M. S Act, 1894, and Ss. 146, 272 to 279 of the Indian M. S. Act, 1923

Salvage and wreck in case of aerial navigation. On Air.—Article 23 of Paris Convention, 1919, provided that, with regard to salvage of aircraft wrecked at sea, principles of maritime law will apply in the absence of an agreement to the contrary. By section 11 of the Air Navigation Act of 1920, the law relating to wreck and salvage and to the duty of rendering assistance to vessels in distress (including the provisions of English Merchant Shipping Act, 1894 to 1916) was extended to aircrafts. Section 11 (1) of the Air Navigation Act of 1920 and 1936 provides that any services rendered in assisting or saving life from or saving the cargo or apparel of, an aircraft in, on, or over the shores of the sea or of any tidal water is to be deemed to be salvage services as if they had been rendered in relation to a vessel. Reward for salvage services may be earned by an aircraft and its owner is entitled to reward The above provisions apply even if the aircraft concerned is a foreign one and notwithstanding that the services are rendered elsewhere than within the limits of the territorial waters adjacent to His Majesty's Dominions Aircraft owned by the Crown is subject to the same limitation in the matter of reward for salvage as His Majesty's Ships, *i e*, the Crown could lay no claim for loss, damage or risk to aircraft or to her shores The House of Lords held that no claim by Commander or crew for salvage service is to be allowed without the consent of the Secretary of State first obtained. Secretary of State is not entitled to claim salvage even by agreement[1].

Freight and Demurrage, Liens and Preference. Freight.—Freight is the reward payable for the carriage of goods on arrival of the goods ready to be delivered to the consignee in a merchantable condition. Payment of freight and delivery of goods are concurrent conditions No freight is claimable if shipowner has been prevented from carrying goods to their destination although by causes beyond the carrier's control such as the fact that owing to their own infirmities, the goods have to be destroyed or sold, and the goods cannot be carried to their destination But freight is payable although the goods are carried in a damaged condition, if they are substantially the same goods as those shipped (Vide *Asfar & Co* v *Blundell*[2]) The freighter cannot deduct from the freight for damage to goods but only a separate cause of action for damages lies Freight is payable by shipper or his agent or, consignee

Kinds of freight.—There are various kinds of freight (*a*) Lump sum freight, (*b*) Advance freight, (*c*) Time freight and (*d*) Back freight To earn lump sum freight the voyage has to be completed by the ship or the cargo transhipped to another vessel and delivered at destination Lump sum freight is payable by the shipper even when some of the goods are lost through causes other than excepted perils, where the completion of the voyage is prevented by freighter or where enemies' goods are captured in a neutral ship (when full freight is payable by the enemy) Advance freight is payable though ship and goods are lost. Payment does not depend upon delivery If after advance freight is paid, the voyage is abandoned or if the ship is lost no part of the freight is recoverable Time freight is payable in proportion to the time during which the ship is occupied The time occupied in repairs are not deducted. The time for which the freight is to be paid runs without a break from the beginning to the end of the voyage When cargo owners fail to take delivery in time, the shipowner may incur expense to take care of the cargo and charge the cargo owner with what is known as the "back freight" to cover the expenses incurred. There is a fifth kind of freight known as dead freight which expression is used to denote compensation payable to a shipowner when the charterer has failed to ship a full cargo

Freight, how calculated and paid.—The rate to pay freight is generally stated in the Bill of Lading or charter-party If not, it is calculated at the rate prevailing at the time when shipment was made Where the Bill of Lading expresses that the goods are to be carried freight free or at a nominal rate, the holder of the

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1. *Admiralty Commissioners* v *Valverda (Owners)*, (1938) A C. 173

2. (1896) 1 Q B 123

Bill of Lading is entitled to have goods on paying that alone The rate stipulated in the contract is binding on a subsequent mortgagee with possession of the ship.

The measurement of goods for freight is done by reference to some standard weight and measure specified in the contract. In the absence of a contract or of a uniform custom, the rule is that, if weight and measurements at the port of loading and at the port of discharge differ, the lower weight and measurements are to be taken To whom freight is payable depends upon the terms of the contract of affreightment, or if no person is named therein, to the person with whom the contract is made or to whom or to whose agent the freight is made payable, subject to any subsequent dealings, such as assignment of the freight or mortgage of the ship It may be payable to the shipper, the master, the broker, or a third person or the charterer or the assignee of the freight or the ship or a mortgagee of the ship [1]

Lien for freight—At common law, the shipowner has a possessory lien on cargo for freight (but not dead freight, advance freight nor freight payable after delivery) due on the same voyage It is enforceable by retaining possession, but section 497 of the Merchant Shipping Act, 1894, gave him the power of sale after keeping the goods for 90 days. A broker or shipping agent has his lien for charges and if his charges are not paid before goods reach destination, he can exercise his lien Liens may also be created by express agreement, such as for dead freight or for demurrage, etc. Maritime lien is a privileged claim on a ship, or on her cargo or on both of these for freight or charges in respect of service done to or in respect of injury caused by them. There is no maritime lien on King's ships or ships of a foreign State Maritime lien travels with the thing into whosoever hands the thing passes. It is not dependent on having possession

Demurrage.—Demurrage is a sum agreed to be paid by charterer as liquidated damages for delay beyond a stipulated time for loading and unloading It is compensation for undue detention [2] Demurrage is payable after expiry of "Lay days" "Lay days" run from the date when the ship is ready to proceed for loading and discharging When demurrage is not provided for, damage for detention is payable on the lapse of Lay days, or on the lapse of a reasonable time or on the lapse of the fixed number of days for which demurrage is claimed Charterer undertakes to load or to unload either in a fixed time or in a time not fixed If the engagement is to load or unload in a fixed time, the engagement is absolute and after the ship is ready no impediments excuse charterer.

If no definite time is fixed for loading or unloading, it should be done within a reasonable time which means reasonable under the circumstances or reasonable with reference to the customary methods of the Port Persons liable on the charter-party for demurrage are the charterer or the parties to the Bill of Lading, if the Bill of Lading incorporates the stipulations in the charter-party or if a person takes goods without protest under the Bill of Lading. Persons liable for demurrage on a Bill of Lading are the shipper or consignor, the person presenting the Bill of Lading for delivery and under the Bill of Lading Act, every consignor named in the Bill of Lading to whom property passed

Lien—Lien is a right to retain possession by a shipowner until freight or other charges due to him are paid while goods are taken by consignee. It can be enforced by retaining actual or constructive possession.[3] It is not enforceable on goods wrongly shipped A shipowner may have lien on goods (*a*) under common law and (*b*) by express agreement Common law liens are liens on possession when freight is payable on delivery Some examples of them are liens for freight, for general average contribution and for expenditure on cargo. When freight is payable otherwise than on delivery, there is no lien unless by express agreement.

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1 *Vide* Scrutton of Charter Parties, Art 147, 13th Ed, p 419

2. *G W Ry Co* v *Phillips*, (1908) A C 101

3 *Vide* Blackburn, J, in *Hingston* v *Wendt*, (1876) 1 Q B D 367 at 373

So there is no common law lien on advance freight, dead freight, nor freight payable after delivery. Some examples of liens by express agreement are liens for dead freight, demurrage, advance freight, charter-party freight as against the holder of a Bill of Lading and all expenses or loss caused by incorrect description of goods or shipment of dangerous goods without notice Lien is enforced on all goods. If part of the goods are parted with, lien on the remaining goods for the whole freight is enforced Lien revives on regaining possession

Lien of carriers by air—In the case of carriers by air, Article 18, paras. 1 and 2 of "General Conditions of Carriage of Goods" of International Air Traffic Association provide that carriers by air have the right of a creditor secured by lien over the goods for all sums due under the provisions of the Contract of Carriage. These rights remain as long as the goods are in the possession of a carrier or of a third party who retains them on his behalf

Preference and Rates—There was nothing in common law forbidding a carrier from preferring one customer more, or charging him and his goods less than another, provided higher charges are not unreasonable. Two main statutes forbade undue preference. Section 90 of the Railway Clauses Act, 1854 and sections 42 to 44 of the Indian Railways Act of 1890 require to charge all equally for the carriage of passengers or goods over the same portion of their line and between the same points of departure and arrival If higher charges are collected, carrier is liable to refund. Under section 2 of the Railway and Canal Traffic Act, 1854, no company is to give undue preference to any person or to any particular traffic. But carriers are justified in giving better terms to one trader on the ground that he supplies more traffic, that he packs the goods in such a way as to effect a saving of expense to the carrier or that his supply is in the interests of the public, for example, where goods are supplied to a Municipal Corporation or city at less rates than to an individual The principle of "Longhead and low rate" where rates for long distances are less in proportion than for short distances is worthy of notice This rule has got exceptions as where goods which are not likely to compete with goods at home, low rate is allowed though it has no longhead So also goods coming from foreign port are carried at less rates for short transit because of the convenient packing causing less expense to carry [1]

CARRIAGE OF PASSENGERS, OF LUGGAGE AND OF ANIMALS AND MEASURE OF DAMAGES.

Carriage of Passengers—Contract is made by purchase of ticket which is both receipt for hire and evidence of agreement to carry. In the case of carriers by air under article 3 (1), Schedule I of the Carriage by Air Act, 1932, passenger's ticket is to contain place and date of issue, places of departure and destination, agreed stopping places, name and address of carrier, and a statement that it is subject to the rules of "Convention" Violation of these conditions precludes the carrier from claiming exclusion from or limitation to his liability. Both passenger and carrier are bound by the terms of the ticket If a railway company or other carriers advertise a train which does not run and passengers act on the advertisement, the Railway company or carrier is liable If the train arrives late and a passenger misses a connection and is not able to reach destination in time, he can claim damages for natural consequences, or he can engage a vehicle to destination and charge the carrier reasonably.

Liability—Carrier of passengers are liable only for negligence. They are not liable for negligence of person over whom the carrier has no control [2]

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1. *L & N W Ry Co.* v *Evershed,* (1878) 5 H L 45 and *East India Co* v *Kalidas Mukerjee,* 3 App. Cas 1029 (1901) A C 396.
2. *Daniel* v. *Metropolitan Ry Co*, (1871) L R.

They are not liable for injuries arising from latent defects in machinery, not discoverable by reasonable skill and foresight nor are they liable for injury by contributory negligence of the passenger A carrier such as a railway company is liable for negligence such as for not keeping its premises safe, for allowing carriages to get over-crowded, for squeezing passengers' fingers by the porter shutting the doors of the carriage, etc.[1] If squeezing is caused when the passenger is entering or leaving the train, carrier is liable, but if it is caused after he has entered into the train the carrier is exonerated[2] When doors fly open and a passenger falls out and gets injured, the Railway company is liable as a passenger has a right to expect doors properly fastened When a passenger falls out by jerks when entering or getting out of the train, the defence that the train is in motion is a good and valid defence. When a train either overshoots or stops short of a platform and porters call out "alight" the passenger alights and falls down, the carrier was held liable[3] But a Railway company is not bound to guard against wilful disorder of passengers, or to protect them from one another[4] Liability also arises independently of contract, for example, when a child who was travelling with its mother, with no ticket for the child either because the child was below 3 years of age or because the mother did not know that the child required ticket, was injured by the negligence of the carrier, it was held the carrier was liable Carrier can limit his liability by giving reasonable option to passenger to travel at less fare when passenger is bound by such condition, provided the passenger is not a minor In the case of through tickets over other carriers' lines, contracting carrier is liable for negligence of other carriers for injury caused in the railway lines of those others. The Railway company on whose lines the injury happened are also liable In such cases the passenger can sue both or either

In the case of carriers by air, in the event of death or bodily injury to passenger in order to claim damages, the accident should have occurred on board the aircraft or in the course of any of the operations of embarking or disembarking The carrier avoids liability by proving negligence in pilotage, or in the handling of aircraft or in navigation and by proving that he and his agent took all measures to avoid damage or by proving contributory negligence of the injured. Amount of damages claimable is not to exceed 120,000 francs[5]

Damages—Ordinarily damages are claimable for injury to oneself, wife and servant and for children if they render service Under old law, if the injured dies, cause of action does not survive But the Fatal Accidents Act, 1841 and the Indian Act XIII of 1855 for compensation for death by actionable wrong gave a right of action to husband, parent or child For action under these Acts, the plaintiff should suffer pecuniary loss or lose reasonable prospect of pecuniary gain. If the injured does anything during his lifetime to prevent such an action as by waiver, by acceptance of compensation in full discharge or by contributory negligence, then no right of action survives In the case of injury to passenger by a carrier by air, section 1 (4) of the Carriage by Air Act of 1932 confined the remedy of the injured to the Act itself and excluded all remedies by common law or by statute. In *Green* v. *Imperial Airways*[6], it was held that Fatal Accidents Act did not apply to carriers by air The Act keeps alive the remedy to legal representatives (*Vide* article 27 of Schedule I to the Carriage by Air Act of 1932)

Nervous shock—Questions have arisen whether damages are recoverable for injury due to nervous shock from fright In *Victorian Railway Commissioners* v. *Coultas*[7] on appeal from the Australian Court, the Privy Council has held that the

1. *Jackson* v. *Metropolitan Ry Co*, (1877) 3 App. Cas 193
2. *Fordham* v. *London Brighton & South Coast Ry Co*, (1868) 18 L T. 566
3. *Bridges* v. *North London Railway Co*, L R. 7 H L 213
4. *Pounder* v *North Eastern Ry. Co*, (1892) 1 Q B 385, *Cobb* v *Great Western Railway Co*, (1894) App Cas 416
5. *Vide* Arts 17, 20 and 21 of Sch. I to Carriage by Air Act, 1932
6. (1936) 52 T L R 681.
7. (1888) 13 App Cas 222.

plaintiff could not recover, since damages arising from mere sudden fear, not accompanied by any physical injury are too remote and not the natural and reasonable consequences of the negligent act A decision of the Privy Council is not binding on the Court of the United Kingdom and the judges of the Courts of the United Kingdom and Ireland have definitely refused to follow this decision In *Dulien* v. *White*[1], the King's Bench division in England and in *Bell* v *Great Northern Ry Co. of Ireland*[2], it was held that where nervous shock is caused to a person by an act of negligence which gives rise to a reasonable fear of immediate personal injury, damages may be recovered though no actual impact occurred. Courts in India are not bound to follow the decision of the Courts of the United Kingdom and Ireland in preference to that of the Privy Council

Passengers' luggage—From earliest days of public coaches, it was the custom to take personal luggage without paying additional charge Fare was understood as including charge or remuneration to carry luggage All Railway companies are bound to carry luggage free of extra charge Ordinarily personal luggage alone is to be carried free According to Lord Cockburn, C. J., the true rule is that " whatever the passenger takes with him for his personal use or convenience, according to the habits and wants of the particular class to which he belongs, either with reference to the immediate necessities or to the ultimate purpose, of the journey must be considered as personal luggage."[3] This definitely excludes from "luggage" what are carried for business purposes such as merchandise or articles of furniture or household goods But the term "personal use" and "immediate necessity" might include a gun case of a person going by train to a place where he intended to shoot The point arose in *Britten* v *Great Western Ry Co*[4], where a passenger who took a cycle by train to mount and ride it after alighting from the train contended that it is for his personal use and that he is entitled to carry it without extra charge According to Channel, J , to constitute personal luggage there must be · first of all, it must be for the passenger's personal use : next it must be for use in connection with the journey which means that it must be something which is habitually taken by the person when he is travelling, for use, not merely during the actual journey, but for use during the time he is away from home. In the word luggage there is involved the idea of a package or something of that sort and an article or something of that sort which is taken as it were, loose, as a bicycle is taken, is subject rather to different considerations· Following *Macrow* v *Great Western Ry Co*[3], a revolver, ear-defenders, a pair of binocular glasses and a flash lamp carried in a suit case by an army officer during war were held to be personal luggage in *Jenkyns* v *Southampton Steam Packet Co.*[5] In *Buckland* v. *Rose*[6], luggage was held to consist of articles intended for the personal use of the passenger or his convenience as distinct from merchandise which is carried for the purpose of business

In the case of carriers by air, Article 4 of Schedule I to the Carriage by Air Act of 1932 requires that the carrier must give a luggage ticket showing (*a*) the place and date of its issue, (*b*) places of departure and destination, (*c*) name and address of the carrier, (*d*) number of passenger's ticket, (*e*) a statement that delivery is to be made to the bearer of the ticket, (*f*) number and weight of the package, (*g*) amount of value declared, and (*h*) a statement relating to liability If a luggage ticket does not contain clauses (*d*), (*f*) and (*h*) carrier is not entitled to exclude or limit his liability Liability of a carrier by air is limited to 250 gold francs per kilogram unless the consignor had made a declaration of value at the time of delivery and paid a supplementary sum if required. *Vide* Article 22 (2). In the case of objects which a passenger takes charge a limitation of 5,000 gold francs is placed upon damage to them

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1 (1901) 2 K B 669
2 (1890) 26 L R Ir 428
3 *Macrow* v *Great Western Ry Co*, (1871) 6 Q.B. 612
4 (1899) 1 Q B 243
5 (1919) 2 K B 135
6 (1933) 1 K B. 329

Liability.—As regards luggage, carriers by land such as a Railway company but not coming under the Indian Railways Act (IX of 1890) and carriers by boat, such as a Steam Navigation Co., are liable as insurers unless it is in the personal control of the carrier. Goods under the guise of luggage are not liable for free carriage but if the Railway company accepts things which they know are not personal luggage the company are liable for their safety

A carrier by air is not liable if he proves that he or his agent took all necessary measures to avoid damage or that it was impossible for him or for them to take such measures, or if he proves that damage was occasioned by negligence in the pilotage, landing or navigation of aircraft or by the contributory negligence of the person injured.[1] Carriers by air are liable for loss occasioned by delay in the carriage of passengers, luggage or goods.

Railway companies allow commercial travellers to carry free a quantity of their business effects in which case liability can be limited. Railway companies and passengers may agree not to carry free personal luggage, for example, as in the case of cheap excursion trains where cheap return-tickets are issued

Regarding the liability of a railway company as common carrier of luggage carried in the van of the train by which the passenger is travelling, under section 72 of the Indian Railways Act (IX of 1890) a Railway company is liable for loss of goods entrusted to it as a bailee under sections 152 and 161 of the Indian Contract Act. Under section 75 of the Indian Railways Act, a Railway company is not liable for loss or destruction of any parcel or package containing articles mentioned in the second schedule unless their value is declared and a percentage on the value is paid If the goods are carried in the compartment with the passenger, the company is not so fully liable, since full control over luggage is not given to the company, but would be liable as common carrier for collision, etc.

Liability of a Railway company for passengers' luggage begins the moment it is handed over to a servant of the company entitled to receive it though the train starts after some time. At the end of the journey the Railway company (carrier) is bound to deliver the luggage at the platform and to allow passengers a reasonable time to claim it and passengers should be ready to receive it within a reasonable time. Where a railway company provides porters to carry luggage, the company's liability continues as carrier till porters perform their duty After the lapse of a reasonable time, the contract has been performed by the railway company and the passenger has to make a fresh contract to place goods in cloak room.

Cloak room tickets—The company's liability for goods deposited in cloak room is not as common carrier but as a warehouseman, subject to conditions such as limiting liability for parcels of certain value unless a larger fee is paid. Where there are no conditions in the cloak room ticket, the Railway company is liable as a warehouseman with the exception that in case of misdelievery liability attaches to it without negligence. A Railway company has lien for cloak room charges provided the depositor has a right deal with the article, for example, if a thief deposits, the Railway company has no lien

Through tickets.—Railway companies issuing through tickcts are liable as common carriers throughout the whole journey. Contracting company can limit their liability. Contracting company can contract to limit its liability when loss occurs on lines of other companies also. Such contract is not governed by section 7 of the Railway Canal Traffic Act and binds consignor if brought to his knowledge, although it is not signed by him and although it is not reasonable But section 80 of the Indian Railways Act (IX of 1890) makes the Railway company liable notwithstanding such a contract. The non-contracting company is liable if loss is shown to have occurred on their line but delivery to them is to be proved, otherwise contracting company is liable.

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1 *Vide* Arts. 20 and 21 of Sch I of Air Navigation Act of 1932.

Under Article 30 to Schedule I of Air Navigation Act, 1932, in the case of successive carriers by air, as regards an injury to a passenger, he can take action against the carrier in or during whose carriage the accident has happened and as regards damage to luggage or goods, the passenger or consignor can sue the first carrier, the passenger or consignee can sue the last carrier, during whose carriage the accident happened and those carriers will be jointly and severally liable.

In the event of loss or damage to registered goods or luggage in charge of a carrier, he is liable if the occurrence happened during the carriage by air, whether in an aerodrome or on board an aircraft or in the case of landing outside an aerodrome in any place whatsoever The carrier might avoid liability by proving negligence in pilotage, in the handling of aircraft, or in navigation and that he and his agents took all measures to avoid damage or that the damage was caused by contributory negligence of the injured. And the amount of compensation is fixed under the Act. *Vide* Articles 18, 20 and 21 of Schedule I to Carriage by Air Act of 1932.

Carriage of Animals—Law governing carriage of animals by a carrier by air is the same as the law governing carriage of goods by the same carrier Under section 34 (4) of the Air Navigation Act of 1936, animals are included in the term goods and the law as to carriage of goods by air govern the carriage of animals also by air. Common carriers by land did not carry larger animals before the advent of railways. In the earlier days of Railway companies they did not profess to be carriers of animals and they did so only if they are relieved of all responsibility. The Railway and Canal Traffic Act of 1854 obliges every railway company to afford reasonable facilities for receiving, forwarding and delivering goods; and traffic is expressly defined to include all animals So Railway companies are bound to carry animals thereafter. Section 3 (*u*) of the Indian Railways Act (IX of 1890) defines traffic as including animals. Under section 7 of the Railway and Canal Traffic Act, a Railway company could not relieve themselves of all liability for their neglect or default. Even if they carry without conditions they are liable as common carriers, *i.e.*, as insurers. Even then the Act protects the carrier from liability beyond a certain limit in the case of most important classes of animals such as horses, camels, horned cattle, donkeys, sheep, goats, and dogs and unless declaration of their higher value is made at the time of delivery and an increased charge is paid If no such declaration is made, higher value cannot be claimed even if the Railway come to know of their higher value from some other source If such a declaration is made, no value higher than that is claimable though the Railway company is not bound by that declaration if it could prove that the value of the animal is less.[1] With regard to other animals, a Railway company is bound to carry them on reasonable terms. Under English law, a Railway company is liable as insurers for the carriage of animals. Under the Indian law, they are liable as bailees[2]. A Railway company is not bound to carry wild beasts. If they do so, they can insist on strict conditions. They are justified in refusing to carry unless they are relieved of all liability except upon proof of negligence And in the case of valuable animals of great pecuniary risk, they can refuse to carry except upon less pecuniary liability.

In aircraft, live animals can be carried only by special arrangement. *Vide* Article 8, para 2 of "General Conditions of Carriage of Passengers and Luggage" of International Air Traffic Association. Section 7 of the Railway and Canal Act, 1854, limits liability in case of neglect or default in the "receiving, forwarding and delivering" of such animals. So an animal injured when being brought to company's premises for being carried before any declaration is made is liable up to the limit mentioned in the Act, for the negligence is "negligence in the receiving." As in the case of goods, Railway companies may offer to carry animals at reduced rates for being relieved of all liability except for negligence of company and its

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1. *Vide* S 73 of the Indian Railways Act (IX of 1890).

2. *Vide* S 72 of the Indian Railways Act (IX of 1890).

servants and on other terms. The owner alleging injury by negligence is to prove it. But the circumstances may be such to raise clear inference of negligence. For the defence of inherent vice in the animal, it is necessary to show that the animal is injured through its own act and that the act causing the injury is so far out of the common that the company could not be expected to foresee It is not necessary to show that the animal is injured by its own struggles and no negligence on the company need be proved The vehicle should be strong enough

The Railway company is bound to provide good and proper places and appliances for loading and unloading animals and to guard them against injury by escaping on into the railway lines. Where delivery of cattle is complete, unloading is carried on by both the servants of the Railway company and of the consignee. For the negligence of the latter, the Railway company is not liable As long as cattle is unloaded and in company's premises, larger measure of responsibility rests with the company. If owner provides means for securing animal, the Railway company is not liable for their insufficiency. If company's servants notice at that time that such means are insufficient, the Railway company is made liable.

Delay in delivery may cause serious deterioration and even death of the animal. It is the duty of the Railway company to give them food or water at their expense and recover such charges. There is a statutory duty on Railway company to supply food and water under section 23 of the Diseases of Animals Act of 1894 The Railway company has to provide food and water at particular stations and to give them food and water at the request of consignors. Even if there is no such request the company is bound to supply them with water if animals remain in the railway for 24 consecutive hours Omission to do so for twenty-four consecutive hours is penal It is the duty of the consignee to provide for reception of the animals at the end of transit If he does not do so, he will be liable for the consequences If animals are not received by consignee, the Railway company is to take reasonable care of them and not to turn them out into the road nor let them starve. The company is entitled to recover from owner or consignee such expenses as are incurred in taking care of them If animals are not claimed by the owner even after reasonable time the Railway company is entitled to sell on serving notice on the owner and give the surplus to him [*Vide* section 56 of the Indian Railways Act (IX of 1890)]. Failure of the Railway to provide for safety at the end of transit is negligence for which the company is responsible.

Railway companies have a lien in respect of charges due to them. In exercise of that lien, they can sell them after the prescribed number of days on publishing notice in the local papers and appropriate for their charges and send the balance to the owner. [*Vide* section 55 of the Indian Railway Act (IX of 1890)]

Measure of Damages.—The principles of the law of damages relating to carriage by land and air hold good in the case of damages relating to carriers by water. Damages may be fixed by contract as a sum payable. The general rule is that the party wronged is to be placed in the same position as before. No compensation is allowed for remote causes. Carriers are liable for damage reasonably expected to follow from breach but if special circumstances are contemplated by parties, then carriers are liable for losses arising from them on breach of contract. *Hadley* v. *Baxendale*[1] Mere knowledge of special circumstances, though not from notice given to the carrier is sufficient. In any case there should be notice before entering into the contract and not afterwards. The Plaintiff should not aggravate the loss through unreasonable conduct. He must mitigate it. Compensation is not allowed where losses might reasonably be avoided by taking prudent steps within his power, for example, a freighter engaging another ship if his goods are left behind. Freight earned by a substituted ship is taken into account in estimating

1 (1854) 9 Exch 541.

damages. Incidental advantages to a ship owner are not taken into account in estimating damages, for example increase of freight earned by other vessels of the shipper owing to the improper detention of the chartered ship

A shipowner is entitled to damages for failure to load the ship or for failure to load with the kind of cargo, the damages being the difference between what would have been received and what is actually received as freight, deducting expenses incurred to obtain substituted cargo. If freighter is unable to procure other means of carriage the difference from the value of goods at the place of destination at the agreed time of arrival *minus* their value at the place of shipment and the amount of freight and insurance is the amount of damages awarded.

The freighter may lose by improper delay in carrying and delivering the goods in one of three ways He may lose from having been deprived of the use of the goods Unless notice of the special use to which the goods are to be put is given to carrier he is not liable for loss of such special use[1] He may lose by deterioration of the goods. If deterioration is due owing to the sensitive condition of goods and that sensitive condition is not brought to the knowledge of the carriers, no damages are allowed. He may lose by fall in the market value of the goods. If the fall in the market value is not due to periodical fluctuations, it is not a circumstance by which carrier's liability may be increased.

Where the carrier wholly fails to deliver goods or delivers them in a damaged condition, he is liable for the value at the time and place of delivery. Where there is no market, their cost of manufacture together wth expenses of transit and a reasonable sum as profit is the amount of damages[2].

In cases of wrongful deprivation of goods which could not be replaced, knowledge of special circumstances is not necessary. In such cases, carrier is bound to compensate for all special losses sustained by owner[3].

Where goods are shipped under a wrong description and a carrier is deceived as to their quality and value, then if it is done fraudulently, carrier is not liable for damages If it is done by mistake, the carrier is liable for the article as misdescribed But in cases to which Carriers of Goods by Sea Act of 1924 applies, the shipper is deemed to guarantee the accuracy of particulars and liable for inaccuracies and that the carrier or shipper is not liable for damage, if their nature and value are knowingly misdescribed.

In estimating damages to the owner of the goods, a shipowner or carrier is not entitled to any benefit from the fact that insurers have paid or are liable to pay.

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1. *Welson* v. *L & Y. Ry Co*, (1861) 30 L J. C. P. 232 and *Simpson* v *L. N W Ry. Co*, (1876) 1 Q.B D 274

2 *O'Hanlan* v *Great Western Ry Co.* (1865) 34 L J Q B. 154.

3 *Bodley* v *Reynolds*, (1846) 8 Q.B 779.

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MADRAS LAW JOURNAL.

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LATE MR. N. R. K. TATACHARIAR

We are sorry to record the death of Mr N R K. Tatachariar, the founder and also the editor of The Madras Weekly Notes on the 28th February, 1946

Founded in 1910, the Madras Weekly Notes, under the able Editorship of Mr Tatachariar has been conducted all these thirty-five years and more on fairly well-defined and chalked out lines Being also its founder Mr Tatachariar has had no difficulty in shaping the policy of the journal as he pleased But, it must be said to his credit, that throughout, he has been actuated by a sincere desire to be of service to the legal public His attempts to place legal journalism on a class by itself are well known We dare say that The Madras Weekly Notes would, under the new Editorship of the sons of Mr Tatachariar, continue to render its useful service in the years to come.

SUMMARY OF ENGLISH CASES

YOUNG *v* BRISTOL AEROPLANE CO , LTD , (1946) 1 All E R 98 (H L).

Workmen's Compensation Act (1925), *section* 29 (1)—*Workman receiving compensation for injury—If can subsequently sue employer for damages for breach of a statutory duty—Exercise of option as to the alternative remedies—Effect*

On a construction of section 29 (1) of the Workmen's Compensation Act, *held*, (1) The statutory provisions for workmen's compensation are not to be understood as substituted for remedies against his employer previously available to the workman injured by the personal negligence or wilful act of the employer or of those for whom the employer is responsible One of the remedies so preserved is a right of action based upon breach of a statutory duty. [*See* 1941 A C. 1]. The previous remedies remain available as an alternative for the cases which they cover.

(2) But the two remedies are not to be pursued together For a workman to issue a writ for damages independently of the Act and also to ' claim ' compensation under the Act is forbidden The prohibition of double process applies to the initiation and carrying on of proceedings whether either or both of them will ultimately succeed or not It is presumably inserted for the protection of the employer so that he shall not be vexed with both demands concurrently The protection so given him could in proper cases be secured by stay or injunction.

(3) The option between the two kinds of proceedings is one given to the workman The employer cannot insist on being called upon to pay by one process rather than by the other. It is the workman who opts The option is not equivalent to equitable election. If "election" in the full sense were meant, it would be necessary for the workman to know all that was material to determine his choice.

The workman does not lose his alternative remedy merely because he accepts some payments under the Act, when the option is unknown to him But if the circumstances amount to this that he persists in taking weekly compensation after knowing of the alternative course, he is debarred from changing the nature of his claim. This view is confirmed by the exegetical character of the prohibition against double liability.

[Desirability of framing the provision in such a manner as to get rid of the doubts and difficulties pointed out.]

Re COMPTON, POWELL *v* COMPTON AND OTHERS, (1946) 1 All E R. 117 (Ch. D.).

Will—Gift for education of descendants of three named individuals—Void for perpetuity.

A provision in a will for the creation of a trust and spending of the income in scholarships for the children of three named families offends the rule against perpetuities and is therefore void. It cannot be said that the gift will be valid for a limited period (*e g*, 21 years) which the law could sanction in the absence of any provision in the will for the payment such as "so long as may be legally necessary or for so long as the law may permit"

BOOK REVIEWS.

TOWN IMPROVEMENTS TRUSTS IN INDIA, by Rai Sahib OM Prakash Aggarawala, M A, P C S, Lands Officer and Special Land Acquisition Collector, Delhi Improvement Trust Published by the Federal Law Book Depot, Delhi. 673 pages Price Rs 17-8-0.

As an attempt to elucidate the Law and Practice relating to a subject which now, more than ever, is looming large before the eyes of the urban public this book of Mr OM Prakash, being almost the first in a new field, is bound to be a well-deserved addition to the existing legal publications. After stating the problem in the opening chapter, the author has dealt with the existing Town Improvement Trusts of Bombay, Calcutta, U P, Lahore, Delhi and Nagpur The incorporation of the trusts, their constitution and the conduct of their business have been dealt with on a comparative reference to the respective enactments concerned The various types of improvement schemes, the procedure for framing them and the mode of their execution, have come in for a good analytical treatment The acquisition of land and compensation therefor, naturally find an important place in a book of this type At the end of the book we have some original suggestions of the author as to the planning for the future which deserve good consideration The usefulness of the book is considerably enhanced by the inclusion in the Appendix of the Acts of the different provinces in India in regard to Improvement Trusts Both the printing and get-up of the book are quite good.

FANTASTIC CASES, by Bansilal C Vakil, published by Padma Publications, Ltd., Bombay. 137 pages Price Rs 3-8-0.

The title of the book by itself is enough to attract both the lay and the legal public alike. "The whims and eccentricities of the Bench, Bar and Litigants" have supplied the author the material for the very interesting cases given in the book Apart from affording some amusement to the reader the "cases are set in the atmosphere of fantasticism to make the absurdity, anomaly or eccentricity all the more conspicuous and pointed". Who would not be attracted by such titles as "Is a Lawyer's office a shop," "Is the Lawyer a Machine," "Can a woman insult the modesty of a man" and "Who is a gentleman" It is to be hoped that while enlivening it may not tend to lower the reputation of the Bench and the Bar The book has a neat and attractive get-up.

THE

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SUBROGATION UNDER SECTION 92 T. P. ACT.

BY

SRI T. E. RAMABHADRACHARIAR, B.A., B.L., ADVOCATE, MADRAS.

The interpretation of the term "Mortgagor" in paragraphs 1 and 3 of section 92 of the Transfer of Property Act is one of considerable difficulty. Does it include an heir-at-law or legal representative? Can it mean all representatives?

Section 59-A which explains that the term "Mortgagor" shall be deemed to include persons deriving title from them respectively cannot obviously be applied to this section. If it is, then the section itself becomes otiose.

If so, where is the line to be drawn. Is the word to be confined to the original contracting party or does it extend to the heirs-at-law and devisees as well? The section is said to embody the principle of section 69 of the Indian Contract Act. (*See* Mulla's Commentary and *Kutti Goundan* v. *Mahali Ammal*[1].)

It is now settled that a purchaser of the equity of redemption is entitled to the benefit of the section.

The right of subrogation which a purchaser gets under section 92 is transmissible to his assigns and a purchaser from such purchaser is also entitled to the benefit of the section (Vide *Abarthoraman Kutti* v. *Ittikaparambil Athan*[2] and *Venkatachari* v. *Karuppan Chetti*[3].)

A purchaser from such purchaser who covenants to pay the prior mortgage, will be entitled to the benefit of the section and he can hold the first mortgage as a shield against a later mortgagee whom he had not undertaken to pay. (*Ayyareddi* v. *Gopalakrishnayya*[4] and *Lakshmi Amma* v. *Sankara Narayana Menon*[5], and the cases reviewed in *Subbarayudu* v. *Lakshmi Narasamma*[6])

It has been recently explained by their Lordships Somayya and Yahya Ali, JJ., reviewing all the earlier authorities that the proposition "covenant excludes subrogation" must be understood in a limited sense. It will certainly exclude the right of subrogation against a mortgagee whom the purchaser has covenanted to pay. (S. A No. 1005 of 1944, decided on 4th January, 1946.) Even here the Privy Council decision reported in *Janaki Nath Ray* v. *Pramatha Nath Malia*[7]

1. (1911) 22 M L J 364: I.L.R. 36 Mad. 426.
2. (1919) 11 L W 215.
3. (1933) 67 M L J 91.
4. (1923) 46 M L J 164 · L.R. 51 I.A. 140: I.L.R. 47 Mad. 190 (P.C.).
5. (1935) 70 M.L.J. 1: I.L R. 59 Mad. 359 (F B).
6. (1939) 2 M L J. 533.
7. (1940) 1 M.L J. 446 · L R. 67 I A. 82: I.L.R. (1940) 1 Cal. 291 (P.C.).

throws a doubt since notwithstanding the covenant to pay, the further covenant reserving rights of subrogation, helped the man who did not pay the last debt.

Then the question arises whether an heir-at-law or a devisee is entitled to the benefit of the section In the recent case decided by their Lordships Somayya and Yahya Ali, JJ, already referred to, an heir-at-law has been placed in the same position as the mortgagor, the principal contracting party But this point did not arise for decision and does not appear to be necessary on the facts of the case.

The principle of the section is that the actual borrower cannot become his own creditor by paying an earlier debt as he would be derogating from his own grant. So that if a person who is under a personal or contractual liability to pay the creditor, pays the debt, he is really discharging his own debt and he cannot by any legal fiction be deemed to keep alive the debt for his benefit (vide *Subbarayudu* v. *Lakshmi Narasamma*[1] and the cases cited therein). The theory of an agency in making the payment, and the ownership of the money paid, adumbrated in the above case of *Subbarayudu* v. *Lakshmi Narasamma*[1] is not universally accepted. (*See* the observation of Varadachariar, J, in *Lakshmi Amma* v *Sankara Narayana Menon*[2], and *Dinobandhu Shaw Chowdhry* v. *Jogmaya Dasi*[3])

If this is the position, every owner of the equity of redemption, howsoever he may come to own it, other than the principal contracting party is entitled to the benefit of the section. Cases do appear to support this view

In *Kutti Goundan* v. *Mahali Ammal*[4], a bench of our High Court has taken the view that a reversioner of the mortgagor's estate who pays under the threat of Court sale is entitled to the benefit of the section. He could transmit this right to his own purchaser.

That was accepted in *Mollaya Padayachi* v *Krishnaswami Ayya*[5] Again in *Ayyareddi* v. *Gopalakrishnayya*[6], the observations at pages 195-6 are capable of taking in persons other than the buyers of the equity of redemption among the owners of the said equity entitled to the benefit of subrogation Finally in summing up the propositions derivable from a review of the case-law on the subject, His Lordship Justice Venkataramana Rao states that persons, who obtain the equity of redemption by descent, or devise and the purchasers thereof stand on the same footing. The observations of Sir John Romilly in *Davis* v. *Barrett*[7] are relied on also. (*Subbarayudu* v. *Lakshmi Narasamma*[1])

If then the word "mortgagor" in the section will only mean the man, who contracted the debt and is under a personal obligation to pay it, on the principle stated above, the word must have the same sense in both parts of the section

That is why Justice Venkatasubba Rao observes *obiter* in *Srinivasulu Naidu* v. *Damodaraswami Naidu*[8], that the pre-existence of any interest is not necessary for applying clause (*i*) of section 92. The danger in such a construction is that it lets in a whole class of volunteers, who, it is now universally accepted, are excluded by the section.

There is only one more decision to notice in this connection. In *Lakshmi Amma* v *Sankara Narayana Menon*[2], His Lordship Justice Varadachariar explains that a legal representative continues the "persona" of the debtor. The liability for the debt is that of the taker, though the estate only furnishes the measure of such liability; and the remedy of the creditor is only against the representative and not the property. Can this fiction be applied here? These are questions which still remain for solution.

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1. (1939) 2 M L J 533.
2. (193) 70 M.L.J. 1 I L R 59 Mad. 359 (F.B).
3. (1901) 12 M.L J 73 L R. 29 I.A. 9 : I.L.R. 29 Cal 154 at 165 (P C).
4. (1911) 22 M.L.J. 364 : I.L.R. 36 Mad. 426.
5. (1924) 47 M.L J 622 (640).
6 (1923) 46 M L J 164 L.R. 51 I A. 140 : I.L R 47 Mad 190 (P C)
7 (1851) 14 Beav 542 51 E R. 394.
8. A I.R. 1938 Mad. 779.

SUMMARY OF ENGLISH CASES.

R. *v.* THE JUSTICES OF THE APPEALS COMMITTEE OF THE COUNTY OF LONDON QUARTER SESSIONS, (1946) 1 All E R. 129 (C A).

Criminal Trial—Dismissal of charge of selling intoxicating liquor without licence—Appeal—If from criminal cause or matter—Test

In an appeal against an order refusing an application for an order of prohibition against the hearing and determination of an appeal by the excise authorities against dismissal of information that the appellant sold intoxicating liquor by retail without licence, a preliminary objection was raised that no appeal lay as it was a criminal matter within the meaning of the Supreme Court of Judicature (Consolidation) Act, 1925, S 31 (1) (*a*).

Held, the test to be applied in deciding whether the judgment under appeal was in a " criminal cause or matter " within the meaning of section 31 (1) (*a*) of the Supreme Court of Judicature (Consolidation) Act, 1925, is this : If the cause or matter is one which if carried to its conclusion may result in the conviction of the person charged and in a sentence of some punishment, such as imprisonment or fine, it is a criminal cause or matter. Accordingly the preliminary objection that no appeal lay as it was a criminal matter must prevail.

DAGGER *v.* SHEPHERD, (1946) 1 All E.R. 133 (C A.)

Landlord and tenant—Notice to quit " on or before " a specified date—Validity and construction.

A notice to quit demanded :—

" Dear Sir, on behalf of our client Mrs W A. M Dagger, we hereby give you notice to quit " Kenwood " on or before March 25, next . . . ." It was held by the County Court that the insertion of the word, " or before " in the phrase " notice to quit on or before March 25," rendered an otherwise good notice uncertain and ambiguous and fatal to its efficacy. On appeal,

Held, (1) a notice to quit being a " a unilateral act " in exercise of a contractual right to put an end to an existing relation of landlord and tenant must conform strictly to the legal requirements of the contract There must be plain and unambiguous words claiming to determine the existing tenancy at a certain time. (ii) The Court must assume that the parties to the contract of tenancy are aware of its terms particularly of the provisions relative to its termination (iii) The effect of the notice on its construction is first to give to the tenant notice that the landlord did thereby give an irrevocable notice to determine on March 25, 1945, and secondly, to make to the tenant an offer to accept from him a determination of that relationship on any earlier date (of the tenant's choice) on which the tenant should give up in fact possession of the premises.

Accordingly a notice to quit " on or before " a fixed date is *prima facie* valid and effective (Authorities reviewed).

STENOR, LTD *v* WHITESIDES (CLITHEROE), LTD , (1946) 1 All. E R. 176 (C.A.)
Patents and Designs Act, section 93—Fuse of cutout having shape dictated solely by the function it has to perform—Mere mechanical device which is not registrable Mechanical device—Test.

A " design " under section 93 of the Patents and Designs Act does not include any mode or principle of construction or anything which is in substance a mere mechanical device. A mechanical device is a shape in which all the features are dictated solely by the function or functions which the article has to perform. Where in a design for an electric fuse all the features are dictated solely by the function which is to be performed by the article to which the shape is applied, and that shape possesses no features beyond those necessary to enable the article to fulfil

its function, the design is in substance "a mere mechanical device and not a proper subject for registration."

JOYCE *v.* DIRECTOR OF PUBLIC PROSECUTIONS, (1946) 1 All.E R. 186 (H L.).

Treason—Alien enjoying privileges under British passport—Allegiance to King when he is out of the realm.

An alien who has been resident within the realm can be held guilty and convicted in England for high treason in respect of acts committed by him outside the realm. So long as an alien holds a British passport, if he is adherent to the King's enemies in the realm or elsewhere he commits an act of treason.

(1945) 2 All.E R. 673 (C.A) affirmed.

TWINE *v* BEANS EXPRESS, LTD, (1946) 1 All E R. 202 (K B D).

Negligence—Unauthorised passenger in commercial van—Fatal accident due to driver's negligence—Owner of vehicle not liable.

The owners of a commercial van provided it for use by a Post Office Savings Bank along with a driver. The instructions to the driver provided that no persons were to travel on the company's commercial vehicles and notices were put up to that effect in the vehicles themselves. *T.*, a mail porter, while returning from a branch of the bank took a lift back in the commercial van to the head office when he met with a fatal accident due to the negligent driving of the van. In an action by his dependants for damages.

Held, the owners of the vehicle did not owe any duty to the deceased to take care in the driving of the van, as he was merely a trespasser. The owners had taken every step reasonably practicable to secure, that there would be none but duly authorised persons on their van They could not reasonably anticipate that there would be this passenger in the van at the time and place of the accident.

INLAND REVENUE COMMISSIONERS *v* THE NATIONAL ANTI-VIVISECTION SOCIETY, (1946) 1 All E R 205 (C A.).

Income-tax Act, sections 37 *and* 40—*National Anti-vivisection Society—If entitled to exemption from tax as established for charitable purposes only.*

The National Anti-vivisection Society cannot be said to be one established for "charitable purposes only" Whether the society is "established for charitable purposes only" that is "for purposes beneficial to the community" is clearly a question of fact to be decided upon evidence. The motive of the donors or founders to benefit the community cannot be the test. The Court can determine whether the purpose of the society is for the public benefit.

(1945) 2 All.E.R. 529, affirmed.

[END OF VOLUME, 1946—I.]